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ABSTRACT

This report, based on official Chinese publications and interviews, examines the barriers official policies present to the realization of the right to education for migrant children in China, at a time when Beijing and other cities are employing large numbers of migrants in urban construction projects in preparation for the 2008 Olympic Games. The report focuses on the 9 years of compulsory education in primary and junior middle school. The first section introduces the subject, highlighting some of China's major cities that attract large numbers of migrants. The second section outlines regulations concerning the education available to migrant children. The third section assesses the major barriers faced by migrant families in obtaining education for their children. The fourth section analyzes these barriers in terms of China's obligations under international human rights law, including treaties to which the People's Republic of China is a state party. The final section presents recommendations to the Chinese government designed to ensure that migrant children are able to realize their right to education (e.g., make education available to all children, regardless of their place of household registration, eliminate discrimination against migrants, and eliminate discriminatory fees as steps toward ending fee charging). (SM)

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ED 467 360

SHUTTING OUT THE POOREST:
DISCRIMINATION AGAINST THE MOST DISADVANTAGED MIGRANT CHILDREN IN CITY SCHOOLS

Human Rights in China
May 8, 2002

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TABLE OF CONTENTS

Executive Summary 3
Introduction 6
I. The situation 7
A. Numbers involved 7
B. How many are in school? 8
C. Social concern 10
D. Official attitudes 11
E. Official provision 14
F. Private solutions 15
II. The regulatory regime 18
A. Right to education enshrined in laws and constitution 18
B. Provisions for children living away from place of hukou registration 19
C. The Beijing April 2002 Temporary Regulations 22
III. Main barriers to realizing migrant children's right to education 23
A. Status barriers 23
B. Economic barriers 25
C. Discrimination 27
D. Poor quality of education available to migrants 29
IV. Implications under international obligations 32
A. The right to education 32
B. Rights of the child 34
C. Availability of education 36
D. Accessibility of education 37
E. Acceptability of education 38
F. Adaptability of education 38
V. Recommendations 38

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Human Rights in China
May 2002

Executive Summary

The Chinese government's failure to provide education to children of parents who are living away from their place of registered domicile under China's current household registration system (*hukou*) is currently shutting some of the poorest children in China's cities out of school. Under the *hukou* system, which assigns everyone to a particular place of residence, only the local government where a child's *hukou* is registered is responsible for providing her/him with the legally mandated nine years of compulsory education.

Although the central and local governments regularly issue regulations spelling out how migrant children ought to be admitted to local schools, in reality these regulations address only the situation of *officially registered* migrant workers, who represent a minority of the total number of migrants living in most big cities, especially given the cumbersome and costly procedures required to obtain the sheaf of permits migrants require for their residence in those cities to be technically "legal."

1.8 million not receiving education

Large numbers of children of migrant parents living in China's biggest and most prosperous cities are thus being denied the right to education by local authorities on the ground that they do not possess the correct registration. As a result of this rigidly applied policy, we estimate that hundreds of thousands of children may have already been deprived of their right to education under Chinese and international law. Over the next decade, millions of children may suffer in this way.

Estimates based on incomplete statistics point to a current total of 1.8 million migrant children in the age group for which compulsory education is mandated (between 6 and 14 years of age) who are not receiving education at all, although the real figures could be higher, given that China's migrant population is estimated between 100 and 150 million. The problem is made particularly acute due to the low level of state spending on education in China, which is among the lowest in the developing world at 2.5 percent of the GDP.

No recourse for migrant children shut out of schools

Despite increasing social concern about this problem, municipal authorities of major cities such as Beijing and Shenzhen continue to shut migrant children out of schools and to allow educational facilities to discriminate against them by charging them much higher fees than "local" children. A major reason for such discriminatory policies is that local authorities want to deter migrants with families from settling in the cities where they work. Some local authorities have forcibly closed down private schools set up by migrants whose children are barred from regular schools without providing alternative schooling for the children affected.

In one recent case, the authorities closed down around 50 migrant schools in Beijing's Fengtai district, with the objective of "clearing out low quality people." This attitude is particularly disturbing in the light of the fact that Fengtai had been chosen twice (in 1996 and 1998) to operate pilot programs for national regulations regarding the schooling of migrant children. Given the fact that according to official figures, Beijing has a surplus of 300,000 school places, the exclusion of migrant children from the education system is patently unjustifiable.

Migrant children relegated to substandard facilities

The physical environments of the privately-run schools, to which official policies effectively relegate many migrant children, are often poor and the facilities insufficient. Recent official news reports including one in the *People's Daily* pointed to "hazardous facilities," "overcrowded classes," "under-qualified teachers" and "lack of teaching materials," as well as highlighting the overall difficulties under which these schools operate in various cities across China. But official accounts neglect to mention the fact that in many major cities, including Beijing, a major reason for the poor quality of education being offered in private schools is that education departments have refused to allow them to register with the authorities or to help principals attempting to provide a much-needed service to migrant communities upgrade their facilities to reach the officially-mandated standards.

Overall, despite much rhetoric about "new" measures taken to address the situation of migrant children, the Chinese authorities have not given any tangible sign that they are moving away from making migrant children's enjoyment of the right to education conditional on the residency status of their parents.

Urgent measures needed

This report, based on official Chinese publications and interviews, examines the barriers official policies present to the realization of the right to education for migrant children in China, just at the time when Beijing and other cities around the country are employing large numbers of migrants in urban construction projects such as that in the capital for the preparation for the Olympic Games of 2008.

HRIC urges the Chinese authorities to implement the following constructive recommendations to ensure that migrant children are able to exercise their right to education in the places where their families are living. We also request that the International Olympic Committee and the corporate sponsors of the Games impress on the Beijing municipal government the importance of dealing

expeditiously with this problem. We believe solutions for Beijing should be part of a national policy addressing this issue.

Summary of recommendations:

1. **Make education available to all children**, regardless of their place of household registration.

2. **Eliminate discrimination against migrants**: Governments and schools should abolish the distinction between local students and migrant students in all aspects of schooling.

3. **Eliminate discriminatory fees as step towards ending fee charging**: Education in state-run schools should be free of charge to all migrant children within the age of compulsory education, as mandated by Chinese law.

4. **In addition, the national authorities should take immediate steps in order to:**

   Combat popular discrimination against migrants, including children
   Increase resources for education
   Support independent schools providing education to migrants and upgrade their quality
   Make schools accessible to migrant families
   Adapt education provision to needs of migrants
   Increase provision of places for boarders

Introduction

Beijing's preparations for the Olympics appear to be exacerbating the long standing problem of a lack of educational provisions for the children of migrant families in the city, as the private schools that have sprung up to cater to migrants are "cleaned up" in the name of modernizing and beautifying the city. In the suburban district of Fengtai, which is seeking to develop transportation and tourism,[1] this issue became particularly acute in September 2001, when the district government ordered most of the migrant schools to close down, without apparently providing any alternative schooling for the many children affected.

But this is not just a problem for Fengtai or Beijing, but in large cities across the nation. China has recognized the right to education in its constitution and laws, and has ratified the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights, both of which enshrine this fundamental right. But large numbers of children of migrant parents living in China's biggest and most prosperous cities are being denied the right to education due to the restrictions imposed by the *hukou* system. Under this system, which assigns everyone to a particular place of residence, only the local government where a child's *hukou* is registered is responsible for providing her/him with the legally mandated nine years of compulsory education.

Both central and local authorities are well aware that large numbers of migrant children are not receiving compulsory education. Numerous studies have been conducted on the issue, by government agencies, think-tanks, universities and journalists. Yet despite more than six years of increasing social concern about this problem, and the enactment of provisional regulations stating that migrant receiving areas have a responsibility for the education of such children, municipal authorities continue to shut children whose *hukou* is not registered in the city out of schools with impunity, or to consign them to substandard education in privately-run schools that would not be acceptable for urban children.

The national regulations on education of migrant children failed to lift the main barriers to enrollment of these children in city schools. Local regulations in some of the largest cities, such as the recently enacted rules for Beijing, appear to require enrollment of migrant children in city schools, but in reality only make provision for children of documented migrants, excluding a large proportion whose parents do not hold the relevant permits. Thus in China today, the right to education enshrined in domestic law appears to have no legal force when children are away from their place of *hukou* registration.

This report examines the extent to which migrant children enjoy the right to education in China today, focusing on the nine years' compulsory education in primary school and junior middle school. The first section provides an overview of the subject, with a focus on some of China's major cities which are magnets for large numbers of migrants, as well as examples from a few other areas. The second section gives an outline of the regulatory regimes concerning the education available to migrant children. The third section presents an assessment of the major barriers faced by migrant families in obtaining education for their children. The fourth section analyzes these barriers in terms of China's obligations under international human rights law, including treaties to which the PRC is a state party. And finally, we present recommendations to the Chinese government aimed at ensuring that migrant children are able to realize their right to education.

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[1] Introduction to Beijing s Fengtai, available on an official Fengtai Web site, http://www.bjft.gov.cn/ftjj/main.asp. For official information on education in Fengtai, see http://www.ftedu.gov.cn/.

This report was made possible by a grant from the UK Foreign and Commonwealth Human Rights Project Fund. HRIC is grateful for this support. In addition, HRIC would like to thank a number of people not on the organization's staff who contributed to the preparation of this report. Particular thanks go to Anna Wong, who worked on this issue during an internship at HRIC; and to Donna Sullivan, professor of law at the International Human Rights Law Clinic at New York University Law School, and her students Maria-Glenda Ramirez and Young Lee.

I. The situation

With many migrant workers staying in urban areas for long periods of time, an increasing number are bringing their families to join them in the cities. In some of the country's major cities, migrants make up a third or more of the population. Despite the fact that local governments are required by law to provide nine years of compulsory education, until 1996 migrant children were mostly refused permission to enroll in urban schools. New regulations passed that year allowed for the enrolment of children of migrants in state schools in some areas of certain cities on an experimental basis. However, it is unclear how widely this standard has been adopted.

Even when permitted to enroll, children of migrants generally face discriminatory fees in the form of a "temporary schooling fee" (*jiedufei*) which "local" families are not required to pay. In addition, migrant families must pay official service charges and a raft of unofficial fees that are becoming the norm in China's educational system. Parents who do not have the required residency and work permits, or whose children have been born "out-of-plan," may not be able to enroll their children at all, even if they are willing to pay. In some cities, the private schools that have sprung up to cater to the growing band of migrant children may be fined for accepting children from such families.

Since the early 1990s, rapidly growing demand for affordable education for children of migrant parents has led to the establishment of a large number of schools catering for migrant children in the biggest cities. In most cities, local authorities evince grudging tolerance for these private schools, but have refused to register them or provide them with any support. This means the authorities are allowing many schools offering substandard education in poor, even dangerous conditions, to operate without supervision.

The number of migrant schools increased at an even more rapid rate after the passage of national regulations on the education of migrant children, demonstrating that the legislation had failed to address the barriers to integrating such children into city schools. The regulations explicitly allow for public and private schools to provide second class services to such children rather than integrating them into mainstream classes, and do not seek to eliminate the discriminatory fees that put public-sector education out of reach of most migrant families.

A. Numbers involved

According to an estimate by a Chinese scholar, by 1999 the country had 2.1 million migrant children and young people between 6 and 14 years of age, the age group for which compulsory education is mandated. About 1.83 million of these children were not receiving education.[2] By contrast, a 1996 *China Education Daily* article put the number of migrant children at that time at between two and three million.[3] Since large numbers of migrants are undocumented, the real numbers could be substantially higher than this.

[2] Xie Jingyu, Educational problems of rural-urban migrant children, *Northwest Population*, April 1999.
[3] Hope for the children of the floating population to attend school, *China Education Daily*, June 7, 1996.

A 1997 study estimated that there were 120,000 migrant children aged between 6 and 14 years old in Beijing.[4] However, a census of the migrant population in the city that same year found that among the 2.3 million resident migrants there were 255,000 children aged under 14.[5] According to a 1999 article, by that year the city had about 3.295 million migrants, of whom over 200,000 were aged 0—14 years, representing 9.9 percent of the migrant population.[6] In Fengtai District, according to a 1997 survey of migrants, there were 7,965 children aged six to 12.[7]

By the same year, there were an estimated 150,000 school-aged migrant children among Shanghai's floating population, Chinese scholars found. [8] The Southern province of Guangdong was recently reported having more than one million migrant children, out of a population of 20 million non-*hukou* holders.[9]

B. How many are in school?

In the first known mention of the problem of education for migrant children in a report submitted to an international body, in its 2000 country assessment for the UN Education For All initiative, the Chinese government presented a 1996-7 survey carried out by official bodies with the support of UNICEF. This survey, which gave no estimate for the number of school-age migrant children in China's cities, found that an average of 96.2 percent of such children were enrolled in school.[10] Explaining why some were not enrolled, the report stated:

Several factors contributed to the nonattendance at school by part of the school-age children of migrants: first of all, the local schools were overcrowded and the fees charged were too high; second, most migrants live in places bonding urban and rural areas [the peri-urban areas], the parents of children were busy working and unable to pay attention to the schooling of their children; third, the environment of these families was unfavorable, the school performance of these children was not good and they were weary of studying.[11]

Although it does identify some of the key barriers to migrant children receiving schooling, this is still an over simplistic evaluation of the problems, and one which places a large proportion of the blame for the situation on the migrants themselves. The design of the survey and its location means that it does not present a realistic picture of the situation across the country. Firstly, it seems clear that only migrant families registered with the authorities were covered by the survey, as rather than take a random sample of people in areas with a high concentration of migrants, the investigators relied on the local administration for referrals. This is a common problem with such surveys, including many of those mentioned below. Secondly, the survey was only carried out in the six areas where the 1996 experimental regulations requiring local governments to allow

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[4] Xie, Educational problems... see note 2.

[5] Beijing Committee of the Democratic League, Proposal for Services Using the Capital s Educational Resources to Increase the Educational Level and Quality of the Children of Outsiders in the Capital, prepared for the second meeting of the Ninth Beijing People s Political Consultative Conference, February 9, 1999. The Proposal cites a number of studies conducted by city government agencies.

[6] Duan Lihua and Zhou Min, Study of the problems in compulsory education for children of the migrant population, *Modern Education in Primary and Secondary Schools*, February 1999.

[7] Beijing Democratic League, Proposal, see note 5.

[8] Duan and Zhou, Study... see note 6.

[9] Clara Li, Migrants dump high bill for education on city s doorstep, *South China Morning Post*, March 12, 2002, citing an article in *Southern Daily*.

[10] *Education for All: The Year 2000 Assessment Final Country Report of China*, available at http://www2.unesco.org/wef/countryreports/china.

[11] *Ibid.*

migrant children to enroll in local schools were being implemented.[12] These areas were the main focus of an effort to work out methods to address the problem, and thus hardly represent a random sample.

However, another study conducted in the same pilot areas found a lower enrollment rate. According to *Guangming Daily*, in 1997, the enrollment rate for children whose parents possessed the required permits (valid temporary residence permits, employment permits and identification cards) reached over 90 percent.[13]

By contrast, a 1997 study by a scholar found only 12.5 percent of the migrant children in Beijing were enrolled in schools, a total of 15,000.[14] But a municipal study the same year found that 84 percent of migrant children aged six to 15 were in school, while of the 10,000 not enrolled, 3,615 were engaged as child laborers.[15] Another source found that by the end of 2000, of 100,000 migrant children aged 6-14 in Beijing, 87.5 percent were not enrolled in the public schools.[16] Apparently the overall number in school rose rapidly, however, as according to an October 2001 article, 85,000 children of migrant parents were in school in the capital.[17]

An official report states that in 1997, as many as 90 percent of migrant children receiving education in Beijing were enrolled in public schools as "temporary students."[18] By 2001, however, some 19 percent of those in school were in facilities catering to the migrant population,[19] while only six percent had been in such schools at the end of 1997.[20]

In 1998, Ding Jinhong, an academic and member of the Shanghai Committee of the Political Consultative Conference requested that the municipal government investigate the problem of migrant children who were not in school. Ding said that a 1993 study he had conducted found that 100,000 migrant children then four percent of the total migrant population in Shanghai were not in school, and the proportion of school-age children among the migrants had since risen to 15.1 percent.[21]

According to an official report on Shanghai, in 1999, 87,659 migrant students were enrolled in temporary schooling, among which primary and secondary school migrant students accounted for 8.75 percent and 1.48 percent of all students in the state primary and secondary schools in the city, respectively.[22] In Pudong New District, 15,000 migrant children and young people were in city schools, 11,000 of whom were enrolled as temporary students (*jiedusheng*), accounting for 73.3 percent of all the migrant children and young people in schools.[23] In Xuhui District, the number of temporary students was 7,950, representing 80.3 percent of the school-aged migrant children in that area.[24] However, in Minxing District, the enrollment rate for temporary students

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[12] These regulations are described below in the section on the regulatory regime.
[13] Create conditions to enable the migrant children to enroll in school, *Guangming Daily*, March 27, 1997, p.1.
[14] Xie, Educational problems... see note 2.
[15] Beijing Democratic League, Proposal, see note 5.
[16] Growing up on the margins of the city: migrant children, *Southern Weekend*, December 21, 2000.
[17] Chen Xiaobei, Concerns about the education of second generation immigrants, *China Youth News*, October 11, 2001.
[18] Beijing Democratic League, Proposal, see note 5.
[19] Chen, Concerns... see note 17.
[20] Beijing Democratic League, Proposal, see note 5.
[21] Children of Chinese workers lose out on education, Agence France Presse, February 13, 1998.
[22] The Basic Education Secretary of Shanghai Municipality, *1999 Special Report Regarding the Status on Resolving the Schooling Problem for Migrant Children and Young People in Shanghai Municipality*. wysiwyg://198/http://www.sheisnet.sh.cn/ line/base_eduworking/liud_siaon_jiux.htm
[23] *Ibid*
[24] Li Jun, Li Taibin, and Liu Cuilian, Shanty primary schools in big cities, *Society*, April 1998.

was only 36.7 percent of the school-aged migrant children in that area.[25] But according to the same study which generated the figures on Xuhui and Minxing, only 60 percent of the migrant population in Shanghai was registered with the authorities, and thus the enrollment percentages are likely a substantial overestimate.[26]

Despite the high concentration of migrants in Guangdong, a study conducted in September 1996 found that the school enrollment rate for children of migrant parents in an unnamed city in the province was only 12.7 percent; this figure included children who were attending schools in their places of origin.[27]

C. Social concern

Prior to the late 1990s, little or no attention had been paid to the problem of schooling for migrant children, although some cities had allowed a few migrant children to enrol in public schools provided they paid the fees asked.

Since then, the issue has attracted significant attention in some cities, as evidenced by reporting in local newspapers, particularly Beijing and Shanghai. Some such articles expressed concern that a "new generation of illiterates" was being created.[28] Many of these articles are among the sources for this report. Papers including the *China Women's News*, *Guangming Daily*, *China Youth News*, *Education Daily* and some TV stations were among the first to carry reports on the problem.

Considering the numbers of migrants concentrated in Guangdong cities, there has been relatively little reporting of this subject there recently. There was more in the early 1990s, but now the issue is less acute in the largest cities as many migrant schools are operating legally. But occasional reports in the Hong Kong papers testify to continuing tensions over the status of some of these schools.

In addition, there have been a number of studies of schools for migrants. Most of these are not publicly available, but some news articles have cited their conclusions.[29] In both Beijing and Shanghai, local people's congresses and consultative bodies have discussed the problem of children of migrants who are not receiving education in those cities.[30] In early 1999, the Beijing branch of one of China's eight "democratic parties," the Democratic League, submitted a proposal to the municipal consultative conference arguing that the capital should pay more attention to educating migrant children.[31]

Unfortunately the Democratic League appears not to have considered respect for migrant children's right to education under Chinese or international law as a compelling and convincing reason that would persuade officials of the municipal government to take action on the matter.

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[25] *Ibid.*
[26] *Ibid.*
[27] Deng Meifang and Xu Jianxue, University graduates *hukou*-complex an on-line article from China News Digest — Chinese Magazine, Issue 387, August 28, 1998.
[28] He Nanying, The phenomenon of little urban illiterates makes people worry, *China Women's News*, December 20, 1996, p.3.
[29] For example, Zhao Shukai of the State Council Development Research Center and his colleague conducted a study of 114 schools for migrants in Beijing between 1998 and 1999, writes Chen Xiaobei, Concerns about the education of second generation immigrants, *China Youth News*, October 11, 2001. Dr. Han Jialing of the Beijing Academy of Social Sciences has also studied this topic, according to Zou Yanjuan, Schools for migrants in Beijing have been illegal for a number of years, *China Youth News*, November 14, 2001.
[30] Shanghai, *1999 Special Report*, see note 22.
[31] Beijing Democratic League, Proposal, see note 5.

Among the reasons for addressing the problem the League cites social order in the capital and its close relationship to social stability in the country as a whole; in relation to the situation of ethnic minority children, the "large issue" of social cohesion; the overall "quality" of Beijing's population and its relationship to the "position and tasks" of the city; Beijing's position as a "window on the spiritual civilization of the whole country" and its competitiveness in the global environment; and the fact that foreign journalists have reported on this problem.[32]

D. Official attitudes

A major reason for the continuing barriers to migrant children enrolling in city schools is undoubtedly urban authorities' fear that relaxing controls will lead to an "influx" of migrants.[33] To a certain extent, limiting educational opportunities for migrant children is a conscious strategy that the city authorities may use to increase the costs of migration, so as to deter migrants from settling in the cities. As the Beijing Branch of the Democratic League put it:

Outsiders are a necessity for the modernization of the city, since modern cities benefit from the labor services provided by the outsider labor force to their basic industries and essential service provisions, but the cities also have to expend a certain amount of social capital on this. This is because the government has direct responsibility for the development of the social economy and increasing the quality of life for the residents. Therefore, both the government and city residents hope that they can get the maximum benefit from the labor services provided by outsider workers while at the same time minimizing the social capital expended. The basic method is to increase the costs of migration, in order to control the overall number of outsiders. Education is one of the efficient tactics for increasing the cost of migration.[34]

In fact, in most large metropolitan areas, falling birth rates mean that schools have excess capacity, and could easily absorb the migrant pupils. A publication that examines China's development policies argues that urban areas actually have the capacity to make provisions for migrant students, but choose not to do so:

As family planning policies take effect, new student enrollment in primary schools is beginning to drop from a high of 25.3 million in 1995 to 22 million in 1998, according to the 1999 China Statistical Yearbook. The trend is most pronounced in urban areas, where family size is most strictly controlled.... What is to stop local authorities from lowering out-of-catchment fees so that the children of migrants can sit at the empty desks? Unwillingness, as much as incapacity, and the fear of being swamped if conditions get too easy for migrants, appears to remain a major factor.[35]

Although a drop in Shanghai's birth-rate has left many schools with insufficient pupils, some charge high fees or even refuse to admit migrant children. This is despite the fact that according to Shanghai's 1999 "Special Report Regarding the Situation of Resolving the Problem of Schooling for Migrant Children and Young People," education for migrant children was to rely mainly on "temporary schooling" in the full-time state schools.[36]

Beijing schools officially have a maximum capacity of over 1.5 million but the number of pupils currently enrolled is only 1.2 million pupils, thus the system has an unused capacity of more than

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[32] *Ibid.*

[33] Zhang Lijia and Calum Macleod, Learning difficulties: how China s migrants are struggling to learn, *China Review* The magazine of the Great Britain China Center, Summer 2000: Issue 16.

[34] Beijing Democratic League, Proposal, see note 5.

[35] Educational apartheid creates business opportunities, *Chinabrief*, Summer 2000, reporting on a study by the Institute of Rural Labor Development attached to the Ministry of Agriculture.

[36] Shanghai, *1999 Special Report*, see note 22.

300,000 places.[37] More than 100 classrooms in Beijing's state-run schools are reportedly unused due to falling pupil numbers, but such schools generally remain unwilling to make it easier for migrant children to enroll.[38] Statistics show that the number of children in primary school classes was falling during the late 1990s, with figures from the start of the school year in 1997 showing 187,919 children in grade four and only 126,642 in grade one. Furthermore, Beijing sets a class size of 45 for primary schools in the city, with an absolute maximum of 50 per class. But 1998 statistics showed that in most districts in the city, including those with a high concentration of migrants, class sizes were well below 45, with an average for eight city districts of 36 children per class. For Fengtai, the average was even lower, at 33 children per class.[39]

Given its recent attitude to the education of migrant children, it is thus ironic to note that in 1996 Fengtai was designated as a "experimental area" for the education of migrant children.[40] Under this scheme, launched by the national government in six pilot areas including Fengtai and described below in Section II on the regulatory regime, places receiving migrants were to take on responsibility for providing education to migrant children, by making schooling available to them. In Fengtai, this evidently did not lead to any effort to making schooling affordable to migrant families.

Fengtai should not bear the sole blame for this situation. Statistics show that the pressure on education resources in Fengtai is evidently a serious problem. The district came at the bottom of the table for eight Beijing city districts in terms of spending per pupil on primary education in 1997. At 1017 *yuan*, the rate in Fengtai was well below the average of 1325 *yuan* per pupil, and about half the highest spending district, Dongcheng, which spent 1948 *yuan* per student. Apparently the municipal government had not by then provided Fengtai with additional resources to cope with its responsibility for the experiment in taking responsibility for migrant children's schooling.[41] It is unclear whether such resources have subsequently been made available, but the exponential growth of private schools for migrants in the area and the high fees charged for places in public schools does not appear to indicate that such support has been provided.

According to Chinese newspapers and officials, the principal reason why urban schools refuse migrant children or impose high fees on them is that the funds for education for each child are raised by his or her original place of domicile, and thus the schools in cities do not have extra funds to provide free or low-cost education for migrant children.

Whether or not resources are actually made available for migrant children's schooling, officials in a number of cities have wanted at least to be seen to be doing something about the problem. In 1999, official reports said the Shanghai government started to implement plans adopted at a meeting on the schooling of migrant children and young people, which was convened in the Pudong New District in November 1998. The Shanghai government selected Pudong New District, Xuhui District and Minxing District as pilot areas, all of which have a high concentration of migrants, and set up a study group to examine the problem of schooling for migrant children and young people in these areas. The Municipal Education Commission also conducted seminars at district and county levels to investigate the problem. Pudong New District published and distributed a booklet "Ensuring the Schooling and Education of Migrant Children and Young People in Accordance with Law," and organized talks and activities to promote the education of migrant children.[42]

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[37] Beijing issues new regulations: the education of migrant children will be guaranteed (*Beijing chutai xin guiding: liudong renkou zinu jiaoyu jiangyou baozhang*), *People s Daily Online*, April 20, 2002.
[38] Kevin Sinclair, Learning the hard way, *South China Morning Post*, June 14, 2000.
[39] Beijing Committee of the Democratic League, see note 5.
[40] *Ibid.*
[41] *Ibid.* The Proposal cites a number of studies conducted by city government agencies, from one of which these statistics are taken.
[42] Shanghai, *1999 Special Report*, see note 22.

The party leaders of Tianjin Municipality expressly stated that "the schooling problem for migrant children is to be dealt with by the government of receiving areas." The government also set up a special experimental study group in each district and county level to study the issue of education for migrant children and explore ways of running schools. The group includes education administration departments at each district and county, scientific research units, party leaders at schools, other state personnel working for education and professionals. Tianjin Municipality includes the schooling for migrant children in the work of "nine-year compulsory education," and specific state personnel are appointed to carry out the job at each district and county level.[43]

Beijing's leadership is evidently behind the times, as evidenced by the actions in Fengtai, where the district's stated rationale for closing down around 50 migrant schools was to "clear out low quality people." The district government cited a national campaign to upgrade educational standards to justify its action as well.[44] Although a State Council document on reforming education mentioned the need to pay attention to the schooling of migrant children, and stressed that the principal solution should be found in full-time schooling in state-run schools,[45] a speech by the Beijing Vice Mayor on implementing this document failed to mention the subject at all. Instead, the Vice Mayor focused on the fact that Beijing would host the Olympics, saying that this meant that the modernization of education needed to be speeded up, so that Beijing's schools could be comparable to those in developed countries by the year 2010. Evidently, there is little room for migrant education in such a picture.[46]

Urban construction for the Olympics, in Fengtai and in large cities around the country turns out to present a threat to the education of migrant children, since many of the major migrant enclaves are located in the peri-urban areas where such construction generally takes place. The private schools for migrant children that have sprung up to cater to the unmet need for affordable primary and secondary places for such children tend to be located in the places where migrants live, and thus often come under threat when such informal communities are broken up, sometimes without warning and usually without compensation, by new construction work. In addition, plans for such construction generally do not incorporate provisions for the education of migrant children, either in terms of infrastructure or in terms of spending, even when large numbers of migrants are likely to be involved in the construction itself.

Policies towards migrant schooling in some of China's smaller cities do appear to be more progressive than in the large metropolises mentioned above. Yet only a handful of cities, such as Wuhan, Nanjing and Guangzhou, have granted legal status to some migrant schools by issuing them with licenses.[47] However, this is far from universal. In Dongguan, an export processing zone in Guangdong, where migrants make up three quarters of the population, children without *hukou* in the city are not permitted to enroll in the public schools.[48]

Even this, however, does not necessarily represent a policy that genuinely respects migrant children's right to education. In Guangzhou, for example, a number of schools for migrants have been granted licenses, but fees for enrolling non-Guangzhou *hukou* children in the state schools remain prohibitively high. Thus Guangzhou is encouraging a segregated education system that consigns migrants to a second class education, with little chance of advancement to higher

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[43] Xie, Educational problems... see note 2.

[44] Zhao Jie, Why is Beijing s Fengtai District closing down the migrant schools? *Beijing Morning Post*, September 6, 2001.

[45] State Council Decision on Reforming and Developing Basic Level Education, May 29, 2001.

[46] Lin Wenyi, Diligently study the spirit of the national meeting on basic education, work hard to create a new environment for basic education in the capital in the new century, August 23, 2001.

[47] Zhang and Macleod, Learning difficulties..., see note 33.

[48] Dongguan: 17 private schools are far from meeting the demand, September 4, 2001, citing *Guangzhou Daily*, on-line at http://sq.k12.com.cn/~hydjg/xw/010904.htm

secondary and tertiary education. By contrast, in Nanjing's Xinglong District, the local government is trying to integrate migrant children into mainstream schools, and has intervened to improve standards in schools set up to cater for migrant families, including providing funds for local institutions to establish such schools.[49]

The question of education for migrant children was raised in recent discussions on plans for the further development of Shenzhen, a city built almost entirely by migrants and in which only a small minority of the residents are native to the area. Recent reports put the total of school-aged children in the Special Economic Zone (SEZ) at 450,000, of which some 270,000 are from families without *hukou* in Shenzhen. Delegates to the Shenzhen People's Congress expressed deep concern that, according to their estimates, 100,000 migrant children were having difficulty receiving proper education. Another 100,000 children are attending private schools in the city, and presumably the remaining 70,000 are enrolled in the public school system as "temporary students."[50]

Despite the high proportion of migrant children, Shenzhen continues to allocate funds for primary and secondary education on the basis of the number of children with local hukou. Thus public schools are often unwilling to accept migrant students. Shenzhen's mayor ignored the Congress delegates' proposal that the city increase education spending, so as to provide places in public schools for all children resident there. He insisted that the "golden key" to the education of migrant children was the private sector.[51]

Based on the amount per capita Shenzhen allocates for primary and secondary education, this would only cost the city a measly 14.85 million *yuan* per year. Of course there would need to be additional capital expenditure for building new schools as well. Whatever the bill, it would certainly be only a fraction of the 17.7 billion yuan Shenzhen has reportedly earmarked for 140 government projects in the city, including 10.9 billion *yuan* to be spent on infrastructure alone, including an international convention center, a university city and a cultural center.[52]

E. Official provision

One solution to migrant children's schooling has been for urban authorities to set up schools and classes specially for migrants. However, as detailed below, fees for such schools remain prohibitively high for most migrants, and the number of places is below the demand.

City districts in Beijing have set up a handful of schools especially for migrant children. By 1998, Fengtai had set up one such school, run by local people and subsidized by the state (*minban gongzhu*). In that school, the primary section and secondary section charged a fee of 900 *yuan* and 1,000 *yuan* each semester respectively. Together with the charges for accommodation and meals, a migrant parent would have to pay about 6,000 *yuan* for a student to attend this school for a year.[53] A experimental boarding school for migrant children set up by the Fengtai District Education Commission charges 3,000 *yuan* a semester, which is more than most migrant families can afford. Thus by 2000 it had fewer than 100 students.[54]

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[49] Educational apartheid.... see note 35 for reference.
[50] Clara Li, Migrants dump high bill for education on city s doorstep, *South China Morning Post*, March 12, 2002.
[51] *Ibid.*
[52] Clara Li, [HK]$10bn cash injection to upgrade Shenzhen, *South China Morning Post*, March 13, 2002. The article does not indicate over what period of time these funds will be expended.
[53] Deng Meifang and Xu Jianxue, University graduates' *hukou*-complex an on-line article from China News Digest — Chinese Magazine, Issue 387, August 28, 1998. http://ww4.cnd.org/HXWZ/CM98/cm9808d.hz8.html
[54] Sinclair, Learning... see note 38.

In September 2000, Shijingshan opened what was hailed as the first government-subsidized junior middle school exclusively for migrant children in the whole of Beijing. On its first day, this school already had 120 students in its first year class. The report in *Beijing Daily* said students' families only had to pay the temporary schooling fee, while they were exempted from "several hundred yuan" in miscellaneous and other fees. "Parents happily said that since the regular schools no longer closed their doors and thus their children were no longer suffering discrimination, from now on they would have hope," the paper wrote.[55]

In Beijing's Dongcheng District, a private primary school set up a boarding school section for migrant children. The one-off donation fee is 3,000 to 5,000 *yuan*, and the fee for meals and accommodation is 500 *yuan* per month. Such charges are only affordable by the richest migrant families.[56]

The regulations initially passed to cover education of migrant children, the 1996 Trial Measures for the Schooling of Children and Youth Among the Floating Population in Cities and Towns (below, 1996 Trial Measures),[57] provided that those who do not have the conditions to enter the full-time, state-run schools can receive "informal" education through attending supplementary classes run by state schools. However, in Fengtai District, the primary schools found that very few migrant students applied to join in their informal classes. This was because some of those classes were conducted in the evenings, and the parents considered it unsafe for their children to attend classes at that time. Moreover, some migrant parents wanted their children to receive formal education instead of attending these "tuition classes," and clearly working parents need their children to be cared for during the day.[58]

Jiangnan Primary School, the first boarding school for migrant children in Tianjin city run by migrants and subsidized by government (*minban gongzhu*), was set up in 1995. By 1997, it was educating about 300 migrant children from more than 10 provinces including Zhejiang, Jiangsu and Fujian.[59] According to a Chinese newspaper, as of 1997, a total of over 4,000 migrant children were enrolled in primary and secondary schools in Tianjin, accounting for 60 percent of all the migrant children there.[60] However, as with other such figures, it is doubtful that this includes the children of migrant parents who are not registered with the urban authorities.

F. Private solutions

As city schools have often either refused to accept migrant pupils or have set their fees at a level that is not affordable to migrant parents, since the early to mid-1990s, large numbers of private schools have been set up in cities with large migrant populations. The 1998 Provisional Measures allow the establishment of "simplified" schools for migrants by "social forces" (*shehuibanxue*) upon approval from the relevant government departments, but most of these schools never receive approval.

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[55] Government provides school for children of outsider workers, from *Beijing Daily*, reprinted in *Southern Daily*, September 4, 2000.
[56] Duan and Zhou, Study... see note 6.
[57] See Section II for details on these and other regulatory provisions on this topic.
[58] Cao Haili, Where can a space be found for their desks? (*Nali anfang tamen de kezhuo*), on-line article from China News Digest Chinese Magazine, Issue 315, April 11, 1997. http://ww4.cnd.org/HXWZ/CM97/cm9704b.hz8.html
[59] Wang Dayong, Tianjin: don t allow one migrant child to be absent from school, *Guangming Daily*, March 30, 1997.
[60] Ibid.

Simplified schools set up by migrants usually operate on a small scale and mainly offer primary education. Many of them are located in the peri-urban areas. The physical environments of these schools are often poor and facilities insufficient.

Many migrant schools use teachers, teaching materials and even school systems from the place of origin of the migrants. Some are even set up with the support of local governments in the sending areas. Educational levels among teachers and principals vary greatly.

In Beijing, many migrant workers set up schools themselves. By the end of 1996, one report said Haidian and Fengtai districts had at least seven primary schools built by and for migrants which had enrolled more than 1,000 migrant children and young people.[61] By the summer of 2001, there were more than 50 migrant schools in Fengtai, and the government planned to close down 50 of them.[62] Shijingshan District had 20 primary schools and one middle school catering to 3,200 migrant children by September 2000.[63]

This rapid growth rate was reflected in the city as a whole. As of summer 2000, there were about 200 to 300 migrant schools in Beijing attended by about 30,000 children, with the number of pupils in each school ranging from nine to over 1,000.[64] Another source put the number enrolled in the city's migrant schools by the end of 2000 at 40,000.[65] Apparently the number of schools had virtually doubled in the space of a year: a 1999 study found 114 migrant schools in the capital, mostly in the outskirts of the city, with pupils in each ranging from seven to 1,300. Except in the largest of these schools, children were taught in multigrade classes.

Shanghai also has a number of schools operated by migrants by leasing or borrowing the school sites in towns in the peri-urban area. These schools charge a temporary schooling fee (*jiedufei*) of only 120 *yuan* per semester.[66] One study found that by 1998, there were about 121 migrant schools in Shanghai with 15,000 students in total.[67] In 1999, there were a total of 250 schools in Shanghai catering specially to migrants including the privately-run, unlicensed variety with a total of 1,613 teachers and 41,274 students.[68]

Bao'an District in Shenzhen was designated as one of the experimental areas for admitting migrant children to schools under the 1996 Trial Measures. The district set up an Office of Running Schools by Social Forces, and by early 1997, Bao'an had around 31 private schools (some of which included junior middle school level classes) with around 10,000 students.[69] But only eight of these schools had licenses,[70] either because of opposition from some of the local governments or because the local education departments had not conducted the necessary inspections.[71]

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[61] Guo Fugeng and Gao Yu, The difficulty migrant children have in enrolling in school cannot be ignored, *Guangming Daily*, March 25, 1997.
[62] Zhao Jie, Why is Beijing s Fengtai District closing down the migrant schools? *Beijing Morning Post*, September 6, 2001.
[63] Government provides school for children of outsider workers, from *Beijing Daily*, reprinted in *Southern Daily*, September 4, 2000.
[64] Lijia & Calum MacLeod, A city of two tales: China s migrants struggle to learn, *Japan Times*, May 17, 2000.
[65] You re working so hard! Teachers in the private primary schools, *Beijing Morning Post*, September 10, 2001.
[66] Li et al, Shanty primary schools, see note 24.
[67] Xie, Educational problems... see note 2.
[68] Li et al, Shanty primary schools, see note 24.
[69] Ninety percent of Bao an private schools do not have licenses , *Ming Pao*, October 25, 1996.
[70] Bao an to enforce rigorous elimination of private schools, seven thousand pupils to be affected , *Ming Pao*, February 10, 1997.
[71] *Ibid.*

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At the end of 1996, officials of the Bao'an District Education Office announced that they had decided to close more than 20 of the unlicensed schools by January 25, 1997, as part of an effort to "build up a spiritual civilization" in Shenzhen to welcome the transfer of sovereignty over Hong Kong in July 1997.[72] The Shenzhen Municipal Education Department ordered that by 1998 all "shack schools" should be closed down, stating that this was part of implementing a Public Security Bureau document on improving the image of the city which required that the number of migrants in Shenzhen be severely curtailed.[73]

In 1997, Rongzhen Private School, which had enrolled more than 500 migrant children, was closed, reportedly due to objections from a local state-run primary school in Liutang Village, which was charging higher fees for migrant students and thus had lost most such pupils to Rongzhen. But the government officials said that the reason for closing Rongzhen School was the effort to clear up "shack schools." Water and electricity was cut off, some teachers were beaten up and the school principal was taken away by the Liutang Village police in handcuffs.[74] According to a Hong Kong newspaper, only around 250 pupils from Rongzhen School were allowed to complete the spring semester for free at the state-run Liutang School, while around 100 were found "not to be on the rolls." Only later were arrangements made to enroll the remaining children in other private schools in their districts.[75] Officials claimed the schools were closed down because the conditions were poor, there were no guarantees that state education standards were being met, the people running the schools were mainly motivated by profit, there were serious safety concerns and many families were "three no haves" (having no temporary residence permit, no identification card and no employment permit) or had out-of-plan children.

Another potential problem for migrant parents enrolling their children in private schools is unscrupulous operators. Given the failure of many cities to regulate such schools, this problem is particularly acute. According to a recent report, a primary school in Longhua, Shenzhen, closed down in February 2002 after the principal disappeared with the money parents had paid in fees. More than 100 children were left without schooling.[76]
By 1998, Guangzhou municipal education authorities had reportedly approved the establishment of 29 private schools, at which over 10,000 students were enrolled. Most of these schools were providing basic education "supplementing provision by the state," and thus "assisting in relieving the problem of children of migrant parents having difficulty getting into schools in the present period."[77]

The same year, eight schools run by local people specially for migrant children (*minban xuexiao*) in Tianhe District in Guangzhou were formally licensed by the government. In the same year the city's Haizhu District closed down a simplified school (*jianyi xuexiao*) but formally approved the establishment of three local-people run schools specially for migrant children.[78] But despite the apparently more tolerant attitude to schools catering to migrant children, in September 2000 the *Southern Daily* reported the closure of two such schools. Parents who had paid fees for their children to attend these schools were left with nowhere to send them.[79]

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[72] *Ibid.*
[73] *Ibid.*
[74] With electricity and water cut off, Bao an private school seeks to survive in extremity , *Ming Pao*, October 24, 1996.
[75] Shenzhen private school closes, nearly 100 pupils have no school to transfer to , *Ming Pao*, March 26, 1997.
[76] Clara Li, Migrants dump high bill for education on city s doorstep, *South China Morning Post*, March 12, 2002.
[77] Guangzhou Municipal Yearbook, 1999 (citing figures from 1998).
[78] Liu Mei, Where did the migrant children go to school? , *China Education Daily*, May 24, 1998.
[79] Ou Dongyong, People-run Huabao Primary School closed down for violating rules in recruiting students, 1,000 pupils are affected and have no school places, *Southern Metropolis Daily*, September 5, 2002.

By mid-2000, primary schools for migrant children in the districts of Guangzhou where this population is concentrated were openly competing to enroll students. Some of the advertisements posted on the streets in Yuancun Village, Sanyuanli and Shipai Village prior to the 2000 September term read: "Key school for migrants," "No restrictions depending on *hukou*," "No need for local *hukou*" and "No donation fees." Whereas before, such schools tended to be in a few rented rooms, some now have dedicated buildings.

These ads point to the barriers parents face if they try to enroll their children in the regular city school system. According to local journalists, only if parents of any child whose *hukou* is not registered in Guangzhou pay a "donation fee" will the school authorities "make an exception" and find a place for the child.

Another potential problem for migrant parents enrolling their children in private schools is unscrupulous operators. Given the failure of many cities to regulate such schools, this problem is particularly acute. According to a recent report, a primary school in Longhua, Shenzhen, closed down in February 2002 after the principal disappeared with the money parents had paid in fees. More than 100 children were left without schooling.[80]

II. The regulatory regime

A. Right to education enshrined in laws and constitution

Article 46 of the 1982 Chinese Constitution provides that: "Citizens of the People's Republic of China have the duty as well as the right to receive education." Article 19 states that the development of "socialist education" is the responsibility of the state.

In 1986, China enacted the Compulsory Education Law, which instituted a system of nine-year compulsory education starting at the age of six or seven. Article 10 of the Act provides that: "The State shall not charge tuition fees for students attending compulsory education. The State shall establish a system of stipends to help poor students pursue their studies."

Under Article 9 of the PRC 1995 Education Law, citizens have equal rights to receive education regardless of their ethnicity, race, occupation and financial status. This right is also contained in Article 5 of the PRC Compulsory Education Law. Article 18 of the Education Law provides that the people's governments of each level should adopt different measures to ensure that children and young people in the age group for compulsory education receive such schooling. Moreover, the parents or guardians of children and young people of school age, and the relevant social organizations and individuals have an obligation to ensure that those children and young people receive and complete the compulsory education as mandated by law. Article 29 states that schools are required to protect the lawful rights of those receiving education. Article 36 provides that all children receiving education have equal rights in respect of school enrollment and school continuation. Moreover, Article 37 provides that the state and society should provide various forms of subsides to children and young people who are eligible to receive education and whose families face financial difficulties.

Under the PRC Compulsory Education Law, the state, society, schools and families should protect the right of children and young people to receive education in accordance with law; all state-run primary and middle schools should charge no tuition fees; all school-age children must enroll in a school near to where they live; and local officials shall assume the responsibility of educating them. The PRC Protection of Minors Law also incorporates the right to education,

[80] Clara Li, Migrants dump high bill for education on city s doorstep, *South China Morning Post*, March 12, 2002.

with Article 9 providing that parents and guardians respect the rights of minors to receive education.

Lack of funding for basic education is a major barrier to the realization of these legal rights. According to "The Summary on the Reform and Development of the PRC's Education," issued on February 13, 1993, the government set a target for annual educational expenditure to reach four percent of the country's gross domestic product (GDP) by 2000. However, by 1999, the sum for PRC's education spending was only around 2.5 percent of GDP, which is far from this target.[81] Moreover, per capita education spending in China remains lower than that in many of the world's poorest developing countries which, on average, devote four percent of their GDP to education.[82]

B. Provisions for children living away from place of hukou *registration*

According to national law, the local government of the area in which a child's *hukou* is registered is responsible for providing her or him with nine years of "compulsory education" free of charge. The 1986 PRC Compulsory Education Law states that the provision of compulsory education is to be undertaken by local governments under the leadership of the State Council, and is to be managed by the government departments of different levels. However, this has been interpreted to mean that local governments have no responsibility for children living in their area whose *hukou* is registered elsewhere. Beijing was an exception, allowing children without hukou in the city but with some links to Beijing to enroll in the city's schools as "temporary students" (*jiedusheng*) since 1970.[83] However, these regulations were mainly aimed at the children of officials.

In April 1996, the State Education Commission issued a set of regulations providing for experiments in providing schooling for migrant children in receiving areas, Trial Measures for the Schooling of Children and Youth Among the Floating Population in Cities and Towns (hereafter "the 1996 Trial Measures").[84]

The 1996 Trial Measures, which were to be applied only in designated areas of particular cities, require that the governments of receiving areas create the conditions and the opportunity for school-aged migrant children to receive compulsory education. Governments in the children's places of origin are required to "strictly control the movement of students who are already enrolled in schools" in the areas within their jurisdiction, so as to prevent school-age children from accompanying their migrant parents. The Trial Measures also state that those students who can be cared for in the place of their *hukou* registration must receive education there, and only those who do not may receive compulsory education in the receiving areas. The 1996 Trial

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[81] Jasper Becker, Forget about hotels and roads, spend the money on children s education, say deputies, *South China Morning Post*, March 15, 1999.

[82] Ibid.

[83] Since the 1970s, children who have no *hukou* in Beijing can go to school if they fall into one of the following categories:

1. Both parents work abroad, provided that the child gets a Beijing work unit or a relative living in Beijing, to be his or her guardian;
2. Both parents work in distant region with no fixed workplace, provided that the child gets a Beijing work unit or a relative living in Beijing, to be his or her guardian;
3. Either parent works in Beijing; or
4. Both parents were formerly sent down youth (*zhiqing*, people sent to the countryside during the Cultural Revolution).

Article 13, Measures Regarding School Enrollment for Secondary and Primary School Students in Beijing Municipality, promulgated in February 16, 1990.

[84] The summary of the 1996 Measures is outlined in *Legal Daily*, June 7, 1996, p.2. We have been unable to locate the actual text of the Measures. Some supplementary information about their content is available in the Beijing Democratic League, Proposal, see note 5.

Measures provide that parents and guardians should ensure that their children receive compulsory education as required by law.

According to the Trial Measures, the schooling of migrant children and young people should rely primarily on "temporary schooling" (*jiedu*) in the full-time state-run schools in the receiving areas. However, such children are only to be enrolled when all allocations have been made for "local" children and this will not mean classes' sizes are larger than the targets set by the authorities. Where the "conditions do not exist" for such children to attend full-time state schools, they may receive informal education in supplementary classes held on weekends and taught by retired teachers. The third solution is for areas in which pupil numbers in primary schools are declining to use some of the facilities to set up "people-run government supported" (*minban gongzhu*) boarding schools.

The Trial Measures allow the schools and supplementary classes of the receiving areas to charge unspecified fees for the schooling of migrant children. Beijing, Tianjin, Shanghai, Shenzhen, Hebei and Zhejiang were selected for the establishment of pilot programs in the implementation of these Measures, in districts to be chosen by the city or province in question. In Beijing, Fengtai District was chosen to run the pilot program.

Based on the experience gained from the implementation of the 1996 Trial Measures, on March 2, 1998, the State Education Commission and Ministry of Public Security promulgated Provisional Measures for the Schooling of Migrant Children and Young People (hereafter "the 1998 Provisional Measures"). Fengtai District of Beijing, Pudong New District of Shanghai, Haizhu District and Tianhe District of Guangzhou were among the areas selected to operate pilot programs in implementing these new rules. It is unclear why after two years of experimentation with the 1996 Trial Measures, the national government felt that a further period of trial programs was needed, rather than the enactment of national regulations requiring all areas receiving migrants to educate the children among them.

Under the 1998 Provisional Measures, the authorities of the receiving areas and the children's places of origin have distinct responsibilities regarding the provision of compulsory education to them, as do the children's parents and guardians. However, the Measures state that the authorities of the receiving areas have principal responsibility for arranging for the schooling of migrant children. This is also confirmed in the Notice of the State Education Commission and the Ministry of Public Security on the Promulgation of the 1998 Provisional Measures.

The 1998 Provisional Measures provide that the people's governments of receiving areas create the conditions for and guarantee that migrant children aged between 6 and 14 who have lived in the areas for more than six months may receive the compulsory education mandated by the people's governments of their home districts. Article 5 provides that the schools of receiving areas should provide "temporary student" status to the migrant students in their schools. Article 6 provides that the parents and guardians of migrant children should send their children to schools to receive compulsory education as mandated by the regulations of their home districts. Thus the specific nature of the responsibility for migrant children's education to be assumed by the receiving areas remains very unclear.

In addition, the 1998 Provisional Measures require migrant parents who wish to send their children to school in the receiving area to get a permit before enrolling their children in school, either from their home area or from the education department in the place where they are living (Article 8).

In similar fashion to the 1996 Trial Measures, the 1998 Provisional Measures provide that the education of migrant children is to rely mainly on temporary schooling (*jiedu*) in full-time state-

run schools, but can be supplemented by other forms of schooling.[85] Article 9 provides that with permission from county-level education administration departments in the receiving areas, "enterprises and institutions, social organizations and other social groups or individuals can run local people's schools (*minban xuexiao*) or simplified schools (*jianyi xuexiao*) specially for migrant children and young people, in accordance with law." Article 10 states that schools may set up "supplementary classes" specially for migrant children. These two articles appear to allow for a separate and unequal type of education to be provided to migrant children, and evidently neither the 1996 Trial Measures nor the 1998 Provisional Measures require local authorities to expand provision of public school places so as to accommodate migrant children.

Article 14 states that the education administration departments and schools in the receiving areas should protect the legitimate rights and interests of migrant children and young people, and ensure that there is no discrimination against them, but gives no information as to what might constitute such prohibited discrimination, or how it might be proven. Article 15 provides that schools should grant certificates or proof of graduation, according to relevant regulations of the receiving areas, to those migrant children who finish their education and pass the necessary examinations.

Like the 1996 Trial Measures, the 1998 Provisional Measures only provide for the compulsory education of migrant children whose parents possess the required permits, including those for temporary residence and employment and an identification card.[86] This means that there is no requirement for local authorities to provide places in state-run schools for the children of the many migrant parents who do not hold these permits, for example due to violation of the population planning regulations.

Most importantly, just like the 1996 Trial Measures, the 1998 Provisional Measures entirely fail to address the fact that migrant children are generally required to pay fees that are not imposed on "local" children, despite the requirement in the Compulsory Education Law that compulsory education be free of charge. Instead, Article 12 of the 1998 Provisional Measures actually allows schools to charge the parents of migrant children fees in accordance with the Provisional Measures on the Management of Fees Charged By Schools Offering Compulsory Education (for full-time, state-run primary and middle schools) and Regulations on the Running of Schools by Social Forces (for other types of education).[87]

Although Article 13 of the 1998 Provisional Measures provides that fees should be reduced or waived for students whose families suffer economic hardship, this provision is vague and there are no specifics as to how it may be invoked. In addition, it appears to apply only to educational facilities set up specially for migrants, such as "simple schools" and special classes in the state schools, or private schools aimed at migrants, rather than to the fees charged by the normal state education system. Under Article 9, funds for non-state schools are to be raised by entities running the schools, and the people's governments and education departments of the receiving areas should "actively assist" them in doing so. However, the 1998 Provisional Measures fail to state what steps the governments should take to "actively assist" those schools.

Most crucially, the 1998 Provisional Measures fail to provide any method of redress to families that wish to challenge the way they are implemented, such as questioning fee levels set for migrant children, challenging a school's refusal to enroll a particular pupil, or invoking reduction of fees due to economic hardship. All penalties for violation of the regulations are administrative,

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[85] Other forms of schools include schools run by local people (*minban xuexiao*), learning classes (groups) subsidiary to the full-time state-run schools and simple schools (*jianyi xuexiao*) which mainly enrol migrant children and young people.

[86] Create conditions... see note 13.

[87] Such as those listed in note 85.

which means that the only recourse for people who believe the rules have been violated is to petition the educational bureaucracy which has jurisdiction over the school in question.

As of March 2001, Shanghai, Wuhan and some other places in the country had enacted implementing regulations for the 1998 Provisional Measures. Beijing, however, had notably failed to do so, but was "stepping up research towards formulating proposals for resolving the problem" of migrant children's access to education.[88] It is interesting to note that Beijing issued a "discussion draft" of regulations on this topic early in 1998, but evidently no agreement had been reached on them, more than three years later.[89]

The regulations mentioned above, Provisional Measures on the Management of Fees Charged By Schools Offering Compulsory Education, which were promulgated by the State Education Commission on February 12, 1997, apply to schools run by the state, enterprises and institutions. Article 9 provides that schools should not charge students anything apart from "miscellaneous fees" (*zafei*) (for "local" students) and "temporary schooling fees" (*jiedufei*) (for migrant students) without the government's approval. However, despite this stipulation, some schools also levy "donation fees" (*zanzhufei*), "school-choosing fees" (*zexiaofei*) and other types of charges on migrant students. Moreover, in case of economic hardship, Article 12 provides for the exemption and reduction of miscellaneous fees, but crucially fails to mention exempting or reducing poor families from paying temporary schooling fees for migrant students.

The Regulations on the Running of Schools by Social Forces were promulgated in 1997 to provide guidelines on the quality of non-state schools and strengthen the supervision of such schools. As do previous regulations, they require that schools and the sponsors meet certain political criteria to be licensed. They also provide for the governments' assistance to such schools on teacher training and research, so as to raise the quality of education they provide.

The Regulations require that fees charged to students' families should be initially proposed by the educational institutions; then the inspection and approval authorities will examine the proposal and raise their opinion; after which the financial department and pricing management department will determine the fees by reference to the education offered, the cost of providing such education and the actual subsidies received by such educational institutions (Article 35). However, the Regulations are vague on the standards for charges, and very few local governments provide clear and specific guidelines on the fees charged by schools run by social forces.

C. The Beijing April 2002 Temporary Regulations

On April 19, 2002, the Beijing municipal government issued new regulations to address the compulsory education of migrant children.[90] The regulations made clear that *all* children must receive education according to law, and were immediately hailed as a breakthrough for migrants' rights in the official media.[91]

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[88] Li Weina, Convening a principals salon for people running schools for migrants, *China Youth News*, March 14, 2001. We have not been able to obtain any of the implementing regulations that have been issued so far.

[89] Beijing Democratic League, Proposal, see note 5.

[90] Provisional measures on the compulsory education of migrant children (*Guanyu liudong renkou zhongshiling erzhong shaonian shishi yiwujiaoyu de zanxing banfa*), April 19, 2002. So far, only a summary of the regulations is available, the full text has not yet been posted on the Beijing government Web site, www.beijing.gov.cn/chinese_new/index.asp.

[91] See for instance: Beijing issues new regulations: the education of migrant children will be guaranteed (*Beijing chutai xin guiding: liudong renkou zinu jiaoyu jiangyou baozhang*), *People s Daily Online*, April 20, 2002 ; Beijing Issues Temporary Regulations that Guarantee that Migrant Children Receive Compulsory Education, *Xinhua*, April 21, 2002.

Among other things, the Temporary Regulations stipulate that:

All children of school-age living in areas under the administration of the Beijing municipality must attend compulsory education.
Local authorities and schools have the responsibility to ensure that migrant children are enrolled in schools.
Street offices (*jiedao banshichu,* the lowest level of government in the urban areas) are in charge of supervision work to ensure that children receive compulsory education. For those whose parents (or legal guardians) are registered in a specific location, the child must enroll in this location. The street offices are required to issue the requisite approval for children to enroll in school as temporary students provided they "fulfill the municipality's conditions for temporary education."
Migrant children receiving temporary education should not be discriminated against in any way.
In districts with a very high concentration of migrants, social groups and individual citizens can, in accordance to the standard conditions of education in Beijing, set up special schools to cater to the needs of migrant children. Local authorities must ensure that these schools operate in accordance with the requirements for compulsory education.

The new Provisional Regulations specify that, starting in September 2002, migrant children "fulfilling the conditions for attending schools on a temporary basis" will be able to enroll in the schools in the neighborhoods where they and their families temporarily live, provided they obtain from the authorities an authorization, "Approval permit for temporary schooling" (*jiedu pizhun shu*).[92]

Despite the apparent generosity of the 2002 Temporary Regulations, the details demonstrate that they will still exclude the poorest and most disadvantaged migrant children from city schools. The "conditions" required for obtaining the "Approval permit for temporary schooling" will effectively exclude a large proportion of the migrant families living in Beijing, those who do not hold all the relevant documents to make their stay in the city "legal." To obtain this permit, the parents need to present a "temporary residence permit" (*zanzhu zheng*) and a "migrant worker permit" (*wailai renyuan qiuye zheng*) in addition to both parents' household registration certificates and identity cards. Besides, the provisions state that "other official documents" can be requested thus giving a *de facto* discretionary power to the officials to turn down an application.

III. Main barriers to realizing migrant children's right to education

A. Status barriers

As mentioned above in the section on the regulatory regime, the legal responsibility for providing compulsory education to children lies with the local governments in the family's place of hukou registration. The 1996 Trial Measures and 1998 Provisional Measures did not change this situation, since they only apply in certain areas of the country and even in those areas, they only confer a very limited responsibility on the local governments in the pilot areas to make temporary places available to migrant children. Furthermore, neither set of regulations envisaged any procedure for assessing whether the pilot areas were meeting their responsibilities, and there are no consequences if local governments refuse to provide school places for migrant children. Finally, both of the Measures allowed for the charging of discriminatory fees, an issue examined in detail below.

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[92] From September 1, Beijing s migrant children can surely attend school temporary education fees lowered *(Beijing liudong shaonian 9.1 qi kejiu jinru xue jiedufei jiangdi), China Youth Daily,* April 20, 2002.

Government responses to the plight of migrant children have often focused more on finding ways to get migrant children out of the cities than on providing them with an education. Official statements tend to represent migrant children as an additional burden for urban education departments where resources are already stretched too thin. In Changyi City of Hubei Province and in Guangdong Province, the people's governments announced that temporary schooling should be strictly controlled.[93] According to a State Education Commission official, "Transient workers should not bring their children to cities until they are earning a regular income so they can guarantee their children regular schooling."[94] A member of the Shanghai Committee of the Political Consultative Conference suggested that migrant children would be better served if they were sent home, and that areas where the children came from should help bear the financial burden of their education.[95] The Shanghai Education Commission has also called for help from home areas of migrants in resolving the problem of migrant children not being in school.[96]

However, such attitudes are mainly directed at the children of poorer migrants. Local governments have actually sought to encourage wealthier and highly educated migrants to bring their money and skills to certain cities by offering school places for their children, as well as other benefits. In order to encourage investment in cities such as Beijing, Shenzhen and Zhuhai, and provinces including Hebei, Fujian and Jiangsu, local governments have implemented policies to reduce temporary schooling fees for the children of people who bring with them funds, management skills, technology, or other professional skills to the cities, or to exempt such parents from the fees altogether. In Dongguan, where large numbers of migrants work in export processing factories, a migrant couple were told that if they did not have a local *hukou*, they would have to show that they had purchased a flat or obtained a business license before they would be allowed to enroll their child in local public schools.[97] It is ironic that business people and investors, who are already earning higher levels of income, may be able to get help with school fees for their children, while poorer migrants in low-paid jobs have to bear the steep fees charged by urban schools unaided.

In practice, temporary student status in the pilot areas under the 1998 Provisional Measures is only available for migrant children whose parents hold the required permits and when there is sufficient space in the appropriate classes.[98] Studies of the migrant population show that on average less than 50 percent are registered with the local authorities.[99] According to a study of migrants in Beijing cited by an official newspaper, only 25 percent had the "three permits" needed to enroll their children in city schools.[100] According to an article by Chinese researchers, in some places the authorities even require parents who wish to enroll their children in schools specially for migrants to present "eight documents" (identification card, temporary residence permit, employment permit, health certificate, population planning certificate, guardianship certificate [*jianhuzheng*] and the birth certificate and health certificate of the child).[101] Given the large proportion of migrant workers who do not have these permits, many migrant children are still excluded from education as a matter of policy, quite apart from questions of availability and affordability of education.

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[93] Measures for Regulating Teaching in Primary and Secondary Schools of Changyi City of Hubei Province, promulgated by Hubei Provincial Government on January 16, 2000; Guangdong Provincial Government, Opinions Regarding the Control of Exorbitant Fees Charged by Schools in Guangdong Province, 2000.

[94] Zheng Ying, Transient children entitled to schooling, *China Daily*, May 6, 1997.

[95] Children of Chinese workers lose out on education, Agence France Presse, February 13, 1998.

[96] *Ibid.*

[97] Dongguan: 17 private schools.... see note 48.

[98] Create conditions... see note 13. The writer states that children will not be admitted when classes were over-sized.

[99] Xie, Educational problems... see note 2.

[100] Beijing district shuts migrant schools to ensure equality, *China Development Brief*, Vol. IV, No.2, Autumn 2001.

[101] Li et al, Shanty primary schools, see note 24.

Another problem is for children who are born "out-of-plan," without a birth authorization being granted by the relevant authorities. Parents of such "black children" can find it extremely difficult to enroll their children in school anywhere, but especially so if they are away from their place of *hukou* registration. One of the principal reasons for a 1996-1997 campaign to close down unlicensed schools in Shenzhen was that many of the pupils were either out-of-plan children or from "three no haves" families.[102] As well as closing the schools, the population planning departments decided that schools would be fined 500 *yuan* for each out-of-plan child found to be enrolled.[103]

B. Economic barriers

In the 1990s, many supposedly state-funded primary and middle schools began to charge a range of "miscellaneous fees" to all students to cover expenses, despite the fact that according to the 1986 Compulsory Education Law, nine years of schooling are supposed to be provided free of charge. For this reason, the various fees are not called "tuition fees," but listed as "miscellaneous fees," "book fees," or other types of charges.

According to some studies in particular areas, students' families in certain areas are required to pay as many as 20 different types of fees, many of which are technically illegal. These often go towards the schools' utility and telephone bills, as well as maintenance and renovation expenses. In many large cities, the cost of receiving an education has risen dramatically, ranging from 3,000 to over 30,000 *yuan* per year. Fee rates in rural areas tend to be lower, as does the quality of the education provided.

Despite a stream of government circulars aimed at curbing the practice, overcharging is still a major problem faced by all school students. Given migrants' marginal status and the unlimited discretion of schools to deny their children places, getting information on the proper fee standards or challenging overcharging would be particularly difficult for them. Regulations warning schools not to overcharge their students have evidently had little effect. With already-high urban fee rates added to the extra charges levied on children whose *hukou* is not registered in the area in question, education is put out of reach of many migrant families, whose often meager salaries are already stretched thin between remittances sent home, and trying to cover unsubsidized health and housing costs.

Prior to 1996, no set standards had been set for temporary schooling fees, so schools that agreed to accept migrant children could effectively charge what they wished. Under the 1996 Trial Measures and the 1998 Provisional Measures governments of the receiving areas and education departments are allowed to impose additional fees on temporary students (*jiedusheng*). These fees are discriminatory, since they apply only to temporary students and "local" students do not have to pay them. Moreover, the standards for such fees are often confusing, and documents regarding the rates set are generally not made publicly available.

Migrant workers who try to enroll their children in the urban schools that will admit them are often asked to pay steep temporary schooling fees, as well as charges labeled "compensation fees" (*buchangjin*), "school choosing fees" (*zexiaofei*), or "donation fees" (*zanzhufei*). Most migrants, who are engaged in low paid jobs and earn from 800 to 1,500 *yuan* a month or less, cannot afford such fees and have to either send their children back to the rural areas to receive education, if there is someone to care for them there, keep them at home, or find alternative schooling they can afford.

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[102] Bao an to enforce rigorous elimination of private schools, seven thousand pupils to be affected , *Ming Pao*, February 10, 1997.
[103] Ibid

According to one survey of migrant parents whose children were not yet in school in Beijing on what rate of fees they could afford to pay, 78.9 percent said they could pay 500 *yuan* or less per semester, 9.5 percent said they could pay between 500 and 800 *yuan*, while 5.8 percent could afford 800 to 1,000 *yuan*.[104]

Extra charges to attend state schools

Evidently, what people are ready to pay is far below the cost of schooling in the public schools in the city. According to one report, in Beijing, normally state-run schools charge three types of fees: a 480 *yuan* per semester temporary student fee, a 1,000 *yuan* school-choosing fee, and a required donation fee varying from 1,000 to 30,000 *yuan*, depending on the quality of the school. Many schools ask migrant parents to pay all these non-refundable fees before the child can begin school.[105] A 1999 report on education for migrants in Beijing found that they were charged an average of 2,000 *yuan* per year for tuition, excluding unspecified book fees.[106] An on-line magazine reported that Beijing's state-run primary schools usually charge 500 to 2,000 *yuan* in donation fees, whereas the donation fees for state-run secondary schools range from 10,000 to 30,000 *yuan*.[107] A businessman from Zhejiang, who had sent his child to a public primary school in the city, said that in addition to the miscellaneous fees, he had to pay 600 *yuan* in donation fees per term or 1,000 *yuan* per year.[108]

The pilot site for the education of migrant children under the 1996 Trial Measures was in Fengtai District, where communities of migrants primarily from Zhejiang, Anhui and Sichuan are situated. An implementing regulation enacted by the Fengtai District Educational Bureau allowed migrant children aged 7-15 to enroll in public schools. However, the Fengtai regulation also imposed a 500 to 1,000 *yuan* per semester temporary schooling fee for each migrant child enrolled in a state-run school.[109] By 2001, fees for migrant children attending state schools in Fengtai were around 3,600 *yuan* per year, composed of a non-refundable 2,000 *yuan* parents had to pay to enroll a child and around 800 *yuan* per semester.[110] According to another source, the temporary schooling fee in Fengtai was 1,200 *yuan* per year in 2000, and was reduced to 600 *yuan* in 2001, while tuition fees were set at 300 *yuan* per semester.[111]

In Shijingshan District of Beijing, to enroll in state-run schools, besides the 400 *yuan* which equally applies to the local students, migrant children's families must pay an annual donation fee of 960 *yuan* and a temporary schooling fee of 1,000 *yuan*. This means that even during the stage of compulsory education, the migrant children have to pay five or six times the fees charged to the local students.[112] For this reason, according to the *Beijing Daily*, most migrant parents in the district do not enroll their children in state schools, but send them to the cheaper, unlicensed schools specially for migrants.[113]

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[104] Beijing Democratic League, Proposal, see note 5.
[105] Li et al, Shanty primary schools, see note 24.
[106] Educational apartheid... see note 35.
[107] Cao, Where can a space... see note 58.
[108] Long Simin, I want to go to school an analysis of the problem of schooling of migrant children in Beijing, *Beijing Legal Daily*, June 12, 1996.
[109] Cao, Where can a space... see note 58.
[110] Zhao Jie, Why is Beijing Municipality s Fengtai District closing down the migrant schools? *Beijing Morning Post* (*Beijing Chenbao*), September 6, 2001.
[111] Beijing district shuts... see note 100.
[112] Zheng Nianhuai, Do you know how hard my life is here, an on-line article http://grwy.online.ha.cn/dashan/xinqing/78.htm, date unknown, found in August 2000.
[113] Government provides school for children of outsider workers, from *Beijing Daily*, reprinted in *Southern Daily*, September 4, 2000.

Fees in the areas outside Beijing's suburban districts are reportedly lower. To attend public schools there, migrant applicants must pay special fees of at least 360 *yuan* per year, as well as the 80 *yuan* for books and fees that local residents pay.[114]

In Shanghai, starting from 2000, new temporary schooling fee (*jiedufei*) standards were applied to newly-enrolled students. The fee standard for primary state-run school was increased from 120 to 170 *yuan* per semester; whereas the standard for junior middle state-run schools was raised from 200 to 250 *yuan* per semester. However, some Chinese scholars pointed out that the fees actually collected in each locality are always higher than the fee standards mandated by the government.[115]

For the least desirable schools in Guangzhou, donations fees which were required for admittance were around 2,000-3,000 *yuan* in 2000, up to 5,000-6,000 *yuan* for somewhat better institutions, and for the top primary schools in the city, as much as 60,000 *yuan*. In addition, anyone who wishes to enroll their child in a school outside the district where their hukou is registered is required by government regulations to pay a "school choosing fee" of 5,500 *yuan*.[116]

Thus just for entrance to the most basic of city schools, a migrant family would have to pay 7,500 *yuan* per child. And this is before the other school fees, which are always higher for non-residents as mentioned above.

Migrant schools cheaper

By contrast, in migrant schools fees are substantially lower. In Beijing, tuition and book fees at such schools per semester were between 330 and 350 *yuan*.[117] For example, Peach Garden School in Beijing, which was founded specifically for migrant children, charges only 300 *yuan* per semester. However, according to another report tuition in some schools for migrants was as low as 80 *yuan* per semester, a rate parents on very low salaries might be able to afford.[118] According to a later report, tuition fees at migrant schools ranged from about 300 to 600 *yuan* a semester per pupil.[119]

Charges in the Guangzhou private schools aimed at migrants were substantially higher than in the capital, with fees set at 750 to 850 *yuan* per semester, plus 200 *yuan* in "miscellaneous fees" per month.[120]

C. Discrimination

As well as the status-based discrimination and discriminatory fee-charging described above, migrant children also face discriminatory attitudes and systems at school that create barriers to their exercising their right to education.

Reports in official newspapers in China on the education of migrant children, while generally sympathetic in tone, often attribute some part of the problem to the "quality" of migrant children and their parents. They point out that many migrant children have not received pre-school education in their places of origin, and are thus behind their urban counterparts in

[114] Erik Eckholm, For China s rural migrants, an education wall, *The New York Times*, December 12, 1999.
[115] Lai Desheng, Economic changes and lack of regulation in education, *Newspaper of the Beijing Teacher Training University*, Social Science Page, March 1999.
[116] Interviews.
[117] Educational apartheid... see note 35 for reference.
[118] Shai Oster, China s migrant schools skirt law, *The Christian Science Monitor*, April 3, 2000.
[119] Sinclair, Learning... see note 38.
[120] Interviews.

educational attainment. Such children, especially those in primary schools, they claim, are not motivated to study and cannot catch up with the rest of the class.[121]

The "low educational level" of migrant parents is also cited as a factor, as well as the fact that they are busy with work and unable to pay attention to the schooling of their children. Furthermore, the environment of these families is described as "unfavorable," particularly since migrant children may have to move from place to place with their families.[122]

Few articles demonstrate much understanding for the problems migrant children may face in adapting to an unfamiliar cultural environment, including different teaching materials and methods, where many may face language difficulties, since their local language will often be different to that of the receiving community.[123]

Rather than discussing how schools can meet the needs of migrant children, urban teachers and administrators are often concerned that accepting such children will affect the overall quality of education in the cities. A teacher in Beijing commented that migrant children are difficult to teach, as their parents do not pay enough attention to their education and do not have time to take care of them, and thus migrant children do not develop proper living, learning and behavioral habits.[124] Many local authorities prefer to spend their education funding on improving the "weak schools" (*boruo xuexiao*) and developing small supplementary classes in order to upgrade the overall education quality, instead of accepting large numbers of migrant children, as they assume these children would bring down the overall quality of the education provided.[125]

As "temporary students" migrants are often not eligible to have their grades recorded and to join in various school activities, such as being designated "Three Goods" students. There is no guarantee that migrant students graduating from private schools will be able to go on to middle schools, since private schools do not have the necessary connections with government high schools or colleges.[126] Furthermore, students from migrant schools may find themselves unable to enter high schools and then colleges, because their diplomas are not officially recognized, due to the unlicensed nature of the schools they attend.[127]

Migrant children may also be prevented from accessing subsidized services provided to urban school children. One example is that children attending unlicensed schools who have to travel to school by bus are not able to obtain the discounted bus fare that local children enjoy, because they need an official chop to apply for a student bus pass, and unlicensed migrant schools are not issued with such seals of official approval.[128]

The discriminatory treatment of the migrant students by the system contributes to the popular discrimination they experience in school. Migrant students often complain about being bullied by local students in urban schools, and even teachers often look down on them. One report suggested that migrant children often feel anxious due to their different cultural background and their "temporary student" status, as well as the discrimination they face in the assessment or remarks given by teachers.[129] One survey found that some migrant children developed psychological

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[121] He Nanying, The phenomenon of little urban illiterates makes people worry, *China Women s News*, December 20, 1996, p.3.
[122] See for example, China EFA report, see note 10 for reference.
[123] Xie, Educational problems.... see note 2
[124] Jin Yong, What are the difficulties faced by the children of migrant workers enrolling as temporary students ? Local primary schools are not full, but migrant children cannot enroll in them, *China Women s News (Zhongguo Fun Bao)*, December 11, 1996.
[125] Duan and Zhou, Study... see note 6.
[126] The quality of private schools is low, but parents don t care, *Ming Pao*, October 26, 1996.
[127] Oster, China s migrant schools.... see note 118.
[128] Zhang and Macleod, Learning difficulties..., see note 33.
[129] Duan and Zhou, Study... see note 6.

problems such as depression, low self-esteem and anti-social behavior as a result of the change in their environment after they moved to the cities.[130] Some migrant parents have cited discrimination from teachers and local students as a reason for preferring to enroll their children in schools attended only by other migrant children.[131] According the founder of Xingzhi School, one of the first such schools in Beijing, "One of the biggest obstacles to educational progress may be a less tangible one, resulting from the pervasive ostracism and ridicule of poor, rural migrants in the big city."[132]

Some Chinese advocates have argued that the segregation of migrant children exacerbates discriminatory attitudes among the "local" population.[133]

D. Poor quality of education available to migrants

China's system of compulsory education is supposed to ensure not only that children of school age go to school, but also that these children receive education of a good quality. However, in practice migrant children generally do not have access to education of similar quality to their local peers, whether they are enrolled in the local public schools or attending private schools set up to cater to migrants.

As described above, municipal governments have failed to provide sufficient places for migrant children at a cost their parents' can afford. Both the 1996 Trial Measures and the 1998 Provisional Measures envisage private schools as part of the solution to the problem of ensuring that migrant children receive an education, but often local governments have refused to license the schools that have sprung up to provide for migrant students.

In addition, because of the unlicensed status of these schools, the authorities generally make no effort to regulate their administration and teaching quality. Although tacitly accepted, the authorities seem to view them as a necessary evil, and fail to ensure that the students whose only opportunity for an education lies in such institutions are being properly served by them. Given such an attitude, it is hardly surprising that the authorities have failed to offer such schools any assistance in upgrading their capacity and quality.

For the migrant children attending state-run schools, the problem of quality is primarily related to the discrimination detailed above. In addition, those municipal schools or supplementary classes specially established for migrants may also be providing education which is substandard in comparison to that being received by their urban peers. As mentioned in Section II, the current regulations specifically authorize lower quality education to be provided to migrant children including through "supplementary classes."

At some of the private schools, the quality of the education provided is very evidently inferior, and the conditions are sometimes so poor that they may pose a risk to the health and safety of the students.

The state requires that schools have a minimum of 300 pupils, but many migrant schools are much smaller than this.[134] Some are one or two room affairs, with children taught in multi-grade classes. A 1997 report in *Guangming Daily* described one of the Beijing migrant schools, in which 140 students from pre-school classes to primary six were squeezed into classrooms in five dilapidated single-story houses. For the students from primary four to primary six, desks and seats

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[130] Zhang and Macleod, Learning difficulties..., see note 33.
[131] Interview with Chinese academic studying migrant schools.
[132] Eckholm, For China s rural migrants.... see note 114.
[133] Zhang and Macleod, Learning difficulties..., see note 33.
[134] Xie, Educational problems... see note 2.

are just a piece of wood on a stack of bricks. Primitive schools of this kind are often referred to as "shack schools" (*penghu xuexiao*).[135]

Conditions in most of the migrant schools in Shanghai are reportedly fairly poor: they lack basic furniture, have poor sanitation and some even do not have toilets for the children.[136] A 2000 report described a school in Minxing District operated by the Education Bureau of Shou County, Anhui Province, in which classes of 60 children were being taught in a room of 20 square meters in a building slated for demolition.[137] Overly large and multi-grade classes are common in these schools. Even in the Xingzhi School, one of the better migrant schools in Beijing, classes generally have more than 50 students each.[138]

The situation of a school like Xingzhi highlights the problems of quality, and the way that the approach of municipal officials militates against serious improvements. The school was founded in 1994, by five people doing master's degrees in education at the Beijing Teachers College.[139] Although it has grown from nine students to close to 2,000 in just a few years, it is still unlicensed and survives on meager resources.[140] Now around half of the teachers are educated above college (*dazhuan*) level.[141] Officials said they would legalize the school, but kept delaying the paperwork.[142] Xingzhi has had to move five times after being driven out of previous locations by developers or the police.[143]

In fact, to date *none* of the privately-run migrant schools in Beijing has succeeded in obtaining a license to operate, although some of them have much more elaborate facilities than those described above, and have received extensive coverage in local and international media, as well as attention from international NGOs and foundations. According to an Education Commission officer in Beijing Municipality, no school set up by migrant workers had ever been registered with them, because none of them met the requirements for school operation. Such schools can be closed down by the local government departments at any time.[144] In the early years of such private schools, some were repeatedly closed down by the municipal government. But as concern grew about the number of children not enrolled in school, the city adopted a policy of tolerance, but has still failed to create a procedure for licensing most schools for migrants.[145]

Educators in many of the unlicensed schools want the official endorsement that will end their "illegitimate" status. But very often officials are sending confusing and ambiguous messages. A principal of a Beijing migrant school complained that "there are no guidelines to follow and they have no clue what the government requires for the informal simple schools."[146] This uncertainty means that some operators of such schools are not willing to invest more to improve their quality. In Beijing, no government agency is supervising such schools.[147]

The closing down of migrant schools often happens with no warning, and little attempt is made to ensure that the children's schooling is not disrupted. The recent situation in Fengtai is a key example, with some 50 schools ordered to close just days before the new school year was about to

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[135] Yuan Xinmin, Don t let the migrant children become new illiterates *Guangming Daily*, March 24, 1997.
[136] *Ibid.*
[137] Educational apartheid.... see note 35 for reference.
[138] Eckholm, For China s rural migrants.... see note 114.
[139] You re working so hard! see note 65.
[140] Eckholm, For China s rural migrants.... see note 114.
[141] You re working so hard! see note 65.
[142] *Ibid.*
[143] Zhang and Macleod, Learning difficulties..., see note 33.
[144] Cao, Where can a.space... see note 58.
[145] Educational apartheid... see note 35 for reference.
[146] Liu Wei, Where can the children of the floating population get an education? (Liudong renkou zin dao na er qu du shu), *China Education News* (*Zhongguo jiaoyu bao*), May 24, 1998.
[147] *Ibid.*

begin.[148] No prior warning was apparently given to the school proprietors, and one school had even constructed a new building during the summer holidays, only to find its pupils blocked from entering the school on the first day of the new term by a team of hired security people the district had set up for the purpose of shutting down the schools.[149] The operator of the Zhangguozhuang Shiyan Primary School said he had invested 140,000 *yuan* in buildings and equipment, including 25 computers for the 200 students, yet the Fengtai authorities claimed that the schools were being closed because they were not up to standard.[150]

In the face of protests from parents and critical reporting in the media, the Fengtai authorities backed down from immediate enforcement of the ban, but said that all 50 schools would have to close by the end of November 2001.[151] Some decided to move to other parts of the city. It is unclear how many remain open to date.

Beijing is not the only city which has summarily shut down migrant schools. Closures of migrant schools have occurred around the country, for a variety of reasons, and generally little effort is made to ensure that the children affected are provided for. At the same time as Fengtai was closing down its migrant schools, Hainan Province closed 31 illegal schools catering to 3,000 students, almost all of which were in the capital, Haikou.[152] There have also been regular closures of privately-run schools in Shenzhen, as mentioned above.

Official statements, while praising migrants' desire to educate their children, stress that unlicensed migrant schools are "illegal." For example, a report in *China Daily* describes the fact that migrants have set up schools as highlighting how motivated they are to educate their children, but also points out that because of the poor physical conditions and quality of education in such "shanty schools" and the fact that they are not registered, they are "illegal."[153]

Even some of the better migrant schools in Beijing, such as Xingzhi, have been repeatedly threatened with closure. One school in Shijingshan, Shicao Migrant Children's School, is located in a building from which it could be forced to move at any time. Since it was established in 1997, the school, which at the end of 2000 had 260 pupils and 12 teachers, has had to move every year.[154]

According to a 1998 article, during an unspecified period in the late 1990s, Beijing's Haidian District instituted a policy of closing all "simplified schools" ("*jianyi xuexiao*") set up for migrant children. However, in this same district the reporter found a school catering to migrants from Zhangbei County, Hebei Province, which had support from the Zhangbei local government, and was exclusively using curricula, teaching materials and exams from the home district.[155]

According to a study by some Chinese scholars, the education administration departments in Shanghai have not issued licenses to migrant schools, thus they do not provide any supervision for their facilities or operations. The government has so far given only tacit consent to their existence.[156] However, other sources claim that Shanghai has been supportive to such schools.[157] As mentioned above, in Guangzhou some migrant schools have been able to register with the authorities.

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[148] Beijing district shuts... see note 100.
[149] Zhao, Why is Beijing s Fengtai.... see note 62.
[150] Beijing district shuts... see note 100.
[151] *Ibid.*
[152] Liu Jian, Hainan shuts down 31 black schools dispersing 3,000 students, *China Education News*, October 9, 2001.
[153] Zheng Ying, Transient children entitled to schooling, *China Daily*, May 6, 1997.
[154] Growing up on the margins... see note 16.
[155] *Ibid.*
[156] Li et al, Shanty primary schools, see note 24.
[157] Liu Mei, Where do the migrant children go to school? *China Education Daily*, May 24, 1998.

Quality of teaching in migrant schools is also often below acceptable standards. A survey of such schools found that 31 percent of principals had no background in teaching, and some were barely literate.[158] One reason is the difficulty of attracting fully qualified teachers. According to one principal in Beijing: "We haven't been operating long, so we don't have many students, and of course the teachers' salaries are not high. We don't have the means to attract high quality teachers, we can just find educated people among the migrants to teach."[159] Around 80 percent of the teachers in these schools are themselves migrants from the rural areas, some with teaching qualifications.[160]

In these schools a teacher may have to teach a number of different subjects. Some schools have only one or two teachers.[161] Most of the teachers in such schools are overloaded with work, and only with volunteer teachers can subjects like art and music be taught and extra-curricular activities organized. Even so, some migrant parents are happy with these facilities, as they feel that the quality of education in these schools is better than that in their hometowns.[162]

IV. Implications under international obligations

A. The right to education

The right to education is guaranteed in a number of international instruments.[163] For instance, Article 26(1) of the UDHR provides that, "[e]veryone has the right to education." Education is recognized as a human right in itself[164] and an indispensable means of realizing other human rights,[165] including the full and effective realization of civil and political rights, and of other social and economic rights as well.[166] Moreover, it is universally agreed that education is one of the few human rights that an individual has a corresponding duty to exercise.[167]

The content of the right to education has been clarified by the Special Rapporteur on the Right to Education who was appointed by the Commission on Human Rights in 1998.[168] In analyzing the nature and scope of the right to education with a focus on the corresponding governmental obligations, the Special Rapporteur has classified government obligations into a "4-A" scheme incorporating four essential characteristics that primary schools should exhibit: availability, accessibility, acceptability and adaptability.[169] This scheme is similar to the essential elements of the right to education identified by the Committee on Economic, Social and Cultural Rights.

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[158] Educational apartheid... see note 35 for reference.
[159] Li, Convening a principals salon .... see note 88.
[160] Li, Convening a principals salon .... see note 88.
[161] Xie, Educational problems... see note 2.
[162] Oster, China s migrant schools.... see note 118.
[163] These include the Universal Declaration of Human Rights (Article 26), the International Covenant on Economic, Social and Cultural Rights (Article 13), the Convention on the Elimination of All Forms of Discrimination Against Women (Article 10), the Convention on the Elimination of All Forms of Racial Discrimination (Article 5), the Convention on the Rights of the Child (Article 28), and the Convention against Discrimination in Education.
[164] *Beijing Platform for Action*, adopted during the Fourth World Conference on Women, para. 69, *available at* gopher://gopher.undp.org/00/undocs/gad/A/CONF.177/95_11/20.
[165] *The right to education (Art. 13)* para. 1, U.N. Doc. E/C.12/1999/10, CESCR General comment 13 (1999).
[166] *The content of the right to education: Working Paper presented by Mr. Mustapha Mehedi* para. 2, U.N. Doc. E/CN.4/Sub.2/1999/10 (1999).
[167] *The Realization of the Right to Education, including education in human rights: Working Paper presented by Mr. Mustapha Mehedi* para. 16, U.N. Doc. E/CN.4/Sub.2/1998/10 (1998).
[168] *Preliminary report of the Special Rapporteur on the right to education, Ms. Katarina Tomasevski, submitted in accordance with Commission on Human Rights resolution 1998/33* para. 1, U.N. Doc. E/CN.4/1999/49 (1999).
[169] *Ibid.* para. 3 and 50.

According to this scheme, schools should be available for all children.[170] Availability includes functioning educational institutions and programs[171] as well as adequate buildings, sanitation facilities, water and trained teachers.[172] Accessibility includes education that is non-discriminatory,[173] as well as physically and economically[174] within the reach of all children. Education must be acceptable, in form and substance, to both parents and children. Acceptability also includes the relevance, cultural appropriateness and good quality of education.[175] Finally, education must be adaptable. In other words, the educational system must be flexible so that it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.[176]

Human rights instruments guarantee primary and secondary level education, as well as technical and vocational education. State obligations vary depending on the level of education. Priority is given to a free and compulsory primary education[177] since it is the largest sub-sector of any education system and it can contribute to broad transformation of societies through the education of children.[178] Parents, guardians, and the state are not allowed to treat a child's access to primary education as optional.[179] No one may deny the right to education of a child. The compulsory element of primary education reflects the duty of both the state and family towards the child, for as long as the latter is not sufficiently mature to decide for himself or herself.[180]

The right to education is expressly formulated to ensure the availability of primary education without charge to the child, parents, or guardians. Fees imposed by the state, local authorities or the school are regarded as having a highly restrictive effect. Governments should seek to eliminate fees and costs, which constitute disincentives to the enjoyment of the right and may jeopardize its realization. Other indirect costs, such as compulsory levies on parents (even if portrayed as being voluntary), or the obligation to wear a relatively expensive school uniform, may also fall in the same category.[181] The obligation of governments to make primary education free implies the elimination of financial obstacles to enable all children to complete primary schooling. Imposing a requirement on children to attend schools which charge fees, even if minimal, that parents cannot afford would make compulsory education illusory.[182]

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[170] *Progress report of the Special Rapporteur on the right to education, Ms. Katarina Tomasevski, submitted in accordance with Commission on Human Rights resolution 1998/33* para. 32, U.N. Doc. E/CN.4/1999/49 (1999).

[171] *The right to education (Art. 13)* para. 1, para. 6[a], see note 165 for reference.

[172] *Ibid.*

[173] Education should be accessible to all, *specially* the most vulnerable groups, without discrimination on any of the prohibited grounds such as sex, race, color or national or ethnic origin, social status. Non-discrimination must be ensured immediately and is not subject to progressive realization.

[174] Education must be affordable to all, especially vulnerable groups. Furthermore, primary education must be available free to all. Free secondary and higher education must be progressively introduced.

[175] *The right to education (Art. 13)* para. 1, para. 6[c], see note 165 for reference.

[176] Differentiated education must also be introduced, which means that cultural and social differences must be taken into account.

[177] States are also obliged to take concrete steps for the progressive introduction of a free secondary and higher education. See Article 13(2)(b) and (a), International Covenant on Social, Economic and Cultural Rights.

[178] http://www.unesco.org/education/educprog/primary_edu/CADindex.html

[179] *Plans of Action for Primary Education (Art. 14)*, CESCR General comment 11 para. 6, U.N. Doc. E/C. 12/1999/4 (1994).

[180] *The content of the right to education*, para. 59, see note 166 for reference.

[181] *Plans of Action for Primary Education (Art. 14)*, CESCR General comment 11, U.N. Doc. E/C. 12/1999/4 (1994), para. 35. The Special Rapporteur has adopted this approach and she cited as support the provision of the CRC on health, which specified that children should not be denied access to health services because of the inability of their parents to pay.

[182] *Progress report of the Special Rapporteur*, para. 50, see note 170 for reference.

States are required to prioritize the introduction of primary education, while also taking concrete steps for the progressive introduction of a free secondary and higher education.[183] At a minimum, State Parties should adopt a national educational strategy which includes secondary, higher and fundamental education, that is compatible with Article 13 of the ICESCR. National education strategies should include mechanisms, such as indicators and benchmarks on the right to education, by which progress can be closely monitored.[184] States are obliged to establish "minimum educational standards" to which all educational institutions[185] are required to conform. A transparent and effective system to monitor such standards must also be established by States.[186] The adoption of a national strategy with an effective and transparent monitoring framework is an immediate duty.

States parties have "a minimum core obligation to ensure the satisfaction of minimum essential levels" of rights, including "the most basic forms of education." In the context of ICESCR Article 13, this includes obligations to: ensure the right of access to public educational institutions and programs on a non-discriminatory basis; ensure that education conforms to the objectives set out in Article 13(1); provide primary education for all in accordance with Article 13(2)(a); adopt and implement a national educational strategy which includes provisions for secondary, higher and fundamental education; and ensure free choice of education without the interference of the State or third parties, subject to conformity with "minimum educational standards."[187] As a party to the ICESCR, which it ratified in June 2001, China is obligated to comply with these minimum essential levels of the right to education.

B. Rights of the child

China ratified the Convention on the Rights of the Child (CRC) on March 2, 1992, and submitted its initial report[188] under Article 44 to the Committee on the Rights of the Child, the independent expert body mandated to monitor compliance with the CRC. During the discussion of China's report, the Committee expressed its concern as to whether "out-of plan children" are receiving compulsory schooling[189] and what other steps, aside from direct assistance to families, are being undertaken by the Government to improve the situation in areas where school enrolment was low.[190]

In its evaluation of China's initial report, the Committee expressed concern regarding the number of children who still do not attend school[191] and the prevailing disparities between rural and urban areas in relation to the provision of and access to social services, including education.[192] The Committee strongly recommended a review of the policy for the implementation of the China's obligations, with special focus on measures being taken to reduce regional and urban-rural disparities in the allocation of resources for the rights of the child, specially with respect to health and education.[193]

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[183] Article 13(2)(b) and (a), International Covenant on Social, Economic and Cultural Rights.
[184] *The right to education (Art. 13)*, para.s 51 and 52, see note 165 for reference.
[185] Established in accordance with Article 13(3) and (4), ICESCR.
[186] *The right to education (Art. 13)*, paras. 54, see note 165 for reference.
[187] Art. 13(3) and (4).
[188] *Initial reports of State parties due in 1994: China. 01/08/95*, U.N. Doc. CRC/C/11/Add.7 (1995).
[189] *Summary Record of the 300th meeting: China. 20/06/96* para. 18, U.N. Doc. CRC/C/SR.300 (1996).
[190] *Ibid*, para. 20.
[191] *Concluding observations of the Committee on the Rights of the Child: China. 07/06/96* para. 19, U.N. Doc. CRC/C/15/Add.56 (1996).
[192] *Ibid*, para. 11.
[193] *Ibid*, para. 31.

In addition to its obligations under traditional human rights law, China has commitments to the full realization of the right to education embodied in declarations, programs and platforms of actions adopted during various international conferences. These include: Agenda 21,[194] The Vienna Declaration and Program of Action,[195] the Program of Action of the International Conference on Population and Development,[196] the Copenhagen Declaration on Social Development and Program of Action of the World Summit for Social Development,[197] and the Beijing Platform for Action.[198]

These programs and platforms of actions adopted during international conferences recognize education as an important factor in achieving the goals of equality, development and peace. Recognizing education as a human right in itself, a number of international and regional policy agreements have focused exclusively on the realization of the right to education.[199] For instance, the World Declaration on Education for All,[200] calls for an active commitment to the

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[194] Adopted at the U.N. Conference on Environment and Development in Rio de Janeiro, Brazil from June 3 to 14, 1992. Enabling the poor to achieve sustainable livelihoods is one of the program areas under Agenda 21. The conference recognizes that an effective strategy for ending the problems of poverty, development and environment should begin by focusing on resources, production and people and should cover education among others. Report of the United Nations Conference on Environment and Development, available at http://www.ciesin.org/datasets/unced/unced.html.

[195] Resulting from the World Conference on Human Rights in Vienna, Austria, from June 25, 1993, the Vienna Declaration and Program of Action recognizes the responsibility of the States to create and maintain adequate measures at the national level, particularly in the field of education, for the promotion and protection of the rights of vulnerable sectors, including migrant workers. Available at http://www.unhchr.ch.

[196] The Program of Action adopted at the 1994 International Conference on Population and Development (September 5 to 13, 1994, Cairo, Egypt) affirms the responsibility of the world community to ensure that all children receive an education of improved quality and complete primary school. It also recognizes the interdependent relationship between education and demographic and social change. Broader access to education is identified as a key factor in reducing internal migration and brain drain and thus, minimizing the movement of qualified people from rural to urban areas. The Program of Action points out that the social and economic integration of migrants is facilitated by universal access to education in return. Available at gopher://gopher.undp.org.

[197] At the 1995 World Summit for Social Development (March 6-12, 1995, Copenhagen, Denmark) States pledged to promote and attain the goals of universal and equitable access to quality education and undertake to [f]ormulate and strengthen time-bound national strategies for the eradication of illiteracy and universalization of basic education. In a statement made by China during the conference, China recognized that education is an important objective in the progress of human society and a common cause of the people of all countries in order to reduce and eliminate poverty, to improve the quality of life and to enable every member of the society to enjoy the rights for life. Available at gopher://gopher.un.org/00/conf/wssd/summit/off/a--9.en.

[198] The Platform for Action adopted in Beijing at the U.N. Fourth World Conference on Women (September 4-15, 1995) calls on Governments, the international community and civil society, including non-governmental organizations to take strategic actions on various critical areas of concern, including specific commitments to eliminate the inequalities and inadequacies in and unequal access by women to education and training. Available at gopher://gopher.undp.org/00/undocs/gad/A/CONF.177/95_11/20.

[199] The Declaration of the 44th session of the International Conference on Education (October 2-3, 1994) (available at http://www.unesco.org/education/information/nfsunesco/pdf/ICE_44_E.PDF) expressed determination to give priority to children who are vulnerable to intolerance, racism and xenophobia. Specific strategies for the education of vulnerable groups, including the organization of educational programs for abandoned children, street children, and refugee and displaced children, were identified as requiring urgent action. At the 2000 World Education Forum (April 26-28, 2000) representatives of Governments (including China), civil society and the U.N. reaffirmed their commitment to the World Declaration on Education for All and adopted the Dakar Framework of Action. Available at http://www2.unesco.org/wef/en-conf/dakframeng.shtm. Access to complete free and compulsory primary education of good quality of children, particularly girls, children in difficult circumstances in the year 2015 was one of the goals emphasized. To achieve this goal, the participants pledged to mobilize a strong national and international political commitment for education for all, develop national action plans and enhance investment in basic education.

[200] The World Conference on Education for All and Framework for Action to Meet Basic Learning Needs met in Jomtien, Thailand between March 5-9, 1990. The Chinese Government sent a delegation headed by the Minister

elimination of disparities in education suffered by vulnerable groups, including rural and remote populations and migrant workers.[201] Similarly, the Delhi Declaration and Framework for Action[202] also addressed ways to eliminate disparities of access and equity, and formulated specific strategies to reach excluded and vulnerable groups and serve their learning needs. Among other implementation mechanisms, the Framework for Action identifies the cultural relevance of education and language of instruction as factors in the improvement of the quality and relevance of education.

Measured against established human rights standards and policy commitments, China's policies and practices on the education of migrant children are incompatible with the international obligations that the Government has implicitly and explicitly accepted. Additionally these policies and practices also fall short of China's own national laws which recognize the right of its citizens to receive education. (See section on regulatory regime, above.)

In its report to the Committee on the Rights of the Child in 1995, China emphasized that compulsory education is free of charge and only miscellaneous expenses are payable and that the local governments have laid down specific criteria governing expenses and prohibiting arbitrary charges. The report also stated that a policy of waiving miscellaneous expenses for pupils whose families have financial problems has been adopted.[203] Despite these claims, evidence shows that government policies and practices with respect to the education of rural migrant children violate obligations of availability, accessibility, acceptability and adaptability.

C. Availability of education

Under the UDHR, everyone has the right to education and the implementation of this provision requires the availability of enough schools to accommodate all children. Faced with prohibitively expensive fees charged by both the state and private schools and the inability to obtain required legal papers and documentation, several communities of migrant workers established their own schools. The fact that the migrant communities are establishing their own schools indicates that China failed to make adequate schooling available for all children.

Furthermore, the closing of schools and the refusal to license schools that meet the criteria set by the government for educational institutions severely limit the number of schools open to migrant children. The CRC, like the ICESCR, guarantees the liberty of individuals to establish their own educational institutions, provided they conform to the minimum standard established by the state. By refusing to license migrant schools that conform to the minimum standards, China is violating the educational freedom of rural migrant children.

A key factor in assessing the extent to which the state is making efforts to ensure the availability of schools is the allocation of resources. The Guidelines for the Reform and Development of Education in China[204] and the Education Law of the People's Republic of China provide that public expenditure on education should reach about 4 percent of the nation's GDP by the year

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in charge of the State Education Commission to attend the conference. *See* http://www2.unesco.org/wef/countryreports/china/ rapport%5F1.html.

[201] Article 3[4], Declaration.

[202] In 1993, the leaders of the nine high-population developing countries (E-9 countries), which include China, reaffirmed their commitment to the goals set by the World Conference on Education for All and the World Summit on Children. (Available at http://www.unesco.org/education/information/nfsunesco/pdf/DELHI.PDF) The countries pledged, by the year 2000 or at the earliest possible moment, to consolidate efforts towards the basic education of children and eliminate disparities of access to basic education arising from gender, age, income, family, cultural, ethnic and linguistic differences, and geographic remoteness.

[203] *Ibid.*

[204] Jointly promulgated by the CCP Central Committee and the State Council.

2000 and that the proportion of budgetary allocations for education in the total budget at the national level should reach at least 15 percent. However, by 1998, the fiscal expenditure on education as percentage of GDP only reached 2.55 percent,[205] which represented a decline from the 2.86 percent of 1991.[206] Thus China had failed to comply with the benchmark it set for itself.

D. Accessibility of education

The 1998 Provisional Measures provide for the compulsory education of migrant children whose parents possess the required permits (i.e. temporary residence permit, employment permit and identification card). Given the large percentage of migrant workers who do not have the required permits to work and live in the cities, many migrant children are excluded from education as a matter of policy and law.

Migrant children are also required to pay fees not imposed on urban children. Article 12 of the 1998 Provisional Measures allows schools to charge parents of migrant children fees, sometimes at a rate five or six times what "local" students are required to pay.

As the overriding principle of human rights law, non-discrimination is essential to the ability of individuals to enjoy civil, cultural, economic, political and social rights. The obligation to ensure access to free and compulsory education in accordance with the prohibition of discrimination is an immediate duty which is not subject to progressive realization. By limiting the applicability of compulsory education to children of migrant parents who possess the required documents, China violates international human rights standards and its own Constitution. Neither international human rights norms nor the Constitution provide for restrictions or qualifications as to who is entitled to enjoy education. Education is to be enjoyed by everyone. Furthermore, every individual has the corresponding duty to exercise it. Having ratified the CRC, China is bound by its provisions on the right to education and the best interest of the child. The law that limits the applicability of compulsory primary education to migrant children whose parents possess the necessary documents is discriminatory and in violation of Articles 28 and 29 of the CRC. Similarly, the law imposing additional charges on parents of migrant children also breaches the same provisions.

Chinese authorities have asserted that the annual cost of educating a child for compulsory schooling is 487.22 *yuan*, of which only a small part (62.6 *yuan* according to the State Education Commission figures) is borne by the parents. Since that figure is still too high for poor families, authorities exempt children whose families are in financial difficulty from the miscellaneous charges.[207] However, evidence shows that in practice there are no mechanisms for providing such subsidies to migrant families.

The prohibitively expensive fees provided under the law and required in practice violate the right to a free primary education guaranteed under human rights instruments and under Chinese law. The requirement that primary education is free implies a corresponding obligation on States to eliminate financial obstacles that deprive children of access to primary education. As noted by the Special Rapporteur on the right to education, such financial obstacles make compulsory and free education illusory. Even if China's Compulsory Education Law prohibits the charging of tuition fees, the miscellaneous expenses imposed on migrant children restrict the enjoyment of this right, which is required to be free, not only from tuition fees but other expenses as well.

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[205] *EFA China Report* Chapters I [Section 4] and V [Section 1], see note 10.

[206] Mun C. Tsang, *Intergovernmental grants and the financing of compulsory education in China*, paper for Columbia University Teachers College, June 2001, published on-line at: www.tc.columbia.edu/centers/coce/pdf_files/a1.pdf

[207] *Summary Record of the 300th meeting: China. 20/06/96 f* 5, U.N. Doc. CRC/C/SR.300 (1996).

The Year 2000 Report of China on the implementation of Education For All program indicates that the government considered it desirable to increase revenues from tuition and miscellaneous fees and other revenues of a fiscal nature (including fees for transfer of school and choice of school) and a reduction in public expenditure on education.[208] However, this policy has had the effect of imposing upon citizens part of the financial burden of the state in providing education. An increase in revenues from tuition and miscellaneous fees translates into further deprivation of access to education. This policy is inconsistent with the notion of "free" compulsory education. It also contravenes the international human rights obligations and commitments undertaken by the Chinese government to fully realize the right to education.

E. Acceptability of education

The 1996 Trial Measures provides that children who can be cared for in the place of their *hukou* registration must receive their education there. The objective of this law is to prevent school-aged children from accompanying their migrant parents to urban areas.

Articles 13 of the ICESCR and 26(3) of the UDHR provide for the obligation of the state to respect the liberty of parents to choose educational institutions other than public schools. This freedom may also be extended to the right of parents to choose the *location* of public schools their children will attend, whether in rural or urban areas. It is in the best interest of the child to be educated where their parents are located and where they can be taken care of. When school-aged children are separated from their parents by virtue of state policy, parents are prevented from contributing to and participating in the rearing of their children according to their values and customs. Also, parents are unable to supervise and evaluate the quality of education that their children receive from schools.

Due to the unlicensed status of migrant schools, the operations of these schools are not subject to regulation by the state. The adequacy of the administration, teaching and content of education offered is thus unregulated, or not subject to monitoring. The government has an obligation to provide acceptable education by taking positive steps to ensure that all schools offer education that is relevant, culturally appropriate and of good quality (in form and substance) to both parents and children. By refusing to license migrant schools which meet the minimum criteria set by the government, China violates its obligation to ensure that the education offered by migrant schools is acceptable.

F. Adaptability of education

One of the reason cited by the authorities for putting migrant children into special classes or "simplified schools," or for allowing them to establish special schools, which are generally of lower quality, is that the children have not achieved the same academic standards as their urban counterparts. Such a reality a function of the low level of funding provided to rural schools, especially in poorer areas should not be used as a means to discriminate against migrant children. Rather, schools have an obligation to adapt their teaching to the needs of students, which may, in the case of migrant children, involve providing remedial classes to allow these students to catch up with others.

V. Recommendations

[208] *EFA China Report*, note 205, Chapter I, Section 1.7, see note 10.

As the situation in Fengtai and in Beijing more generally demonstrates, the problem of access to education for migrant children is acute, and should be resolved by addressing the discriminatory nature of the current regulatory regimes and policies, as well as by addressing popular discrimination against migrants at the grassroots level.

Given the potential of Beijing's preparations for the Olympic Games of 2008 to worsen these problems in the city, we urge the International Olympic Committee and the corporate sponsors of the Games to impress on the municipal government that it should expeditiously take up the recommendations outlined below, and to suggest that this should be part of a national policy to address this issue.

Solutions for ensuring that migrant children receive the schooling to which they are entitled should be formulated to accord with the requirements of the international instruments, namely that education be available to all, accessible to all, acceptable to all and adaptable to all. In order that the Chinese government may meet its obligations under international and domestic law to respect the right to education, we propose the following recommendations:

1. **Make education available to all**: Compulsory education should be available to all school-aged children at the place where they are currently resident regardless of their place of *hukou* registration. The National People's Congress Standing Committee should issue an interpretation of the Compulsory Education Law stating that this legislation should not be read as meaning that only the place of his/her *hukou* registration has responsibility for a child's education. The central government should develop a comprehensive policy to give migrant children access to formal, state-run education in the cities where their parents or guardians are working. The first stage of this process would be to conduct a comprehensive review of the educational needs of migrant children, drawing on existing reports and studies, so as to act in an expeditious manner.

2. **Eliminate discrimination against migrant children**: Governments and schools should abolish the distinction between local students and migrant students in all aspects of schooling. Migrant children should be allowed to enroll in schools near to their place of residence and should not be restricted by the status of their parents, such as whether they have any "out-of-plan" children or possess the required permits. No school should set restrictions on the periods for which migrant children are allowed to attend. Any differences in the procedures for enrolling migrant students should be eliminated.

3. **Eliminate discriminatory fees as step towards ending fee charging**: Education in state-run schools should be free of charge to all migrant children within the age of compulsory education, as mandated by Chinese law. In the interim period while fees are being phased out, any discriminatory fees levied only on migrant families, such as "temporary schooling fees" (*jiedufei*) should be immediately abolished. The standards, collection and application of fees should be stated in publicly-available regulations in a clear and consistent manner, and should not be more than families can afford. Where families have difficulties in meeting the charges, provisions should be made for reduced fee levels or total exemption. Inability to pay fees must never be a reason for excluding a child from a public school.

4. **Combat popular discrimination against migrants**: In order to better integrate the migrant children and young people into the cities, governments should ensure that they receive equal treatment to those with the urban *hukou*. Governments and schools should educate local parents, teachers and young people that migrant children have the same right to education as their urban counterparts, and promote the integration of the migrant population into the cities by developing better understanding and communication between locals and migrants.

5. **Increase resources for education**: Central government and local governments should allocate substantially increased resources for the education of migrant children and young people in accordance with the growth of migrant population. "Tight resources" in the cities must not be an excuse for not admitting migrant children to schools, or for charging high fees to migrant families.

6. **Support independent schools and upgrade their quality**: The central and local governments should expeditiously draft clear and consistent regulations under which migrant schools that can meet certain basic criteria can quickly, cheaply and easily obtain legal status. Physical conditions and the quality of education provided in schools set up for migrants should urgently be upgraded so that they meet the same standards as those available in the state schools. This may be done by providing government support to such schools to improve conditions and train teachers.

7. **Make schools accessible**: State schools should be accessible to the migrants, and where no facilities are currently available in areas with a high concentration of migrants with children, there should be immediate efforts to set up new schools to cater for this population.

8. **Adapt education provision to needs of migrants**: Remedial classes should be made available to migrant children who are behind because of their previous educational experience. However, such remedial classes should be a supplement to the children's regular schooling side by side with urban children, and must not be used as a form of second class, segregated education for migrants only within the state school system.

9. **Increase provision of places for boarders**: To cater for the migrant children whose parents have to move frequently, boarding schools should be available near to their places of residence. Boarding charges for children of migrants should be set at a level that the families can afford.

Human Rights in China (HRIC) is an international, non-profit organization founded by Chinese scholars in March 1989 with offices in New York and Hong Kong. HRIC monitors the implementation of international

human rights standards in the People's Republic of China, carries out human rights advocacy and education among Chinese people inside and outside the country and assists victims of human rights violations in China. The group puts out regular press releases, a quarterly English journal, *China Rights Forum*, Chinese-language human rights education materials and books, and occasional reports. It also regularly submits information to U.N. bodies and conducts other international advocacy activities.

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